OCTOBER [illegible]

NO. [illegible]

MONAMOTOR OIL COMPANY,

vs.

RAY E. JOHNSON, Treasurer of the [illegible]

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT [illegible]

BRIEF OF APPELLANT

[illegible]
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In the Supreme Court of the United States

OCTOBER TERM, 1933

NO. 555

MONAMOTOR OIL COMPANY, A CORPORATION,
Appellant,

vs.

RAY E. JOHNSON, Treasurer of the State of Iowa; JOHN FLETCHER, Attorney General of the State of Iowa; J. J. HESS, Assistant Attorney General of the State of Iowa; PERCY A. LAINSON, Sheriff of Pottawattamie County, Iowa; and AMERICAN SURETY COMPANY OF NEW YORK, Bondsmen for Ray E. Johnson, Treasurer of the State of Iowa,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA

BRIEF OF APPELLANT

I.

OFFICIAL REPORT OF OPINION BELOW

The opinion of the District Court of the Southern District of Iowa, Western Division, at Council Bluffs, Iowa, in this case is reported in Vol. 3, Fed. Suppl. No. 4, at page 189 and appears also in the record (Record pages 79 to 132 incl.).

II.

STATEMENT OF THE CASE.

At the commencement of this statement we desire to define and present the issues as presented by plaintiff's bill of complaint.

The Bill of Complaint.

The Bill of Complaint is voluminous and involved, as stated by the opinion of the lower court, but we do not feel that it is prolix. The ultimate operative facts existing upon which the plaintiff must rely being so numerous, and the manner of the violation of plaintiff's constitutional rights by the many sections of the statute and by the many acts of the officers, being so diverse, that the stating of each concisely without repetition accounts for the volume, and the bill for the same reason is involved.

To now get before this Court the issues by a brief statement is practically impossible, and for a complete statement the bill itself must be examined (See Record pp. 1 to 47 incl.).

To briefly state: The Bill of Complaint states facts and acts which constitute continuing violations of the constitutional rights of plaintiff, by reason of the unconstitutional provisions of the statutes relative to a license fee computed on gasoline, and the construction placed thereon by the officers of the State, and enforcement of the statutes so construed by the officers, (said officers being clothed with statutory authority to enforce said statutes), in an unconstitutional manner, together with the facts showing irreparable injury to the business and property of the complainant, and the inadequacy of any remedy at

law, all as a basis for injunctive relief as against such officers.

The Bill states:

That the plaintiff is an Arizona corporation, doing business in Iowa and many other states as a foreign corporation with its principal place of business at Council Bluffs.

That the defendants and substituted defendants are officers of Iowa, clothed with statutory authority to enforce the gasoline and motor fuel statutes of Iowa and collect the taxes thereunder.

The gasoline tax laws are set out at length.

That the business of the plaintiff is extensive and consists of the buying, manufacturing, blending and selling of gasoline and kindred products, the importing into Iowa of gasoline by tank cars, trucks and other containers for the purpose of resale by itself to customers, and to dealers who resell to customers (many of the importations being directly to such dealers, the delivery being made in the original containers upon orders so that the gasoline does not come to rest in the hands of complainant), the exporting of gasoline to other states, the maintenance of large bulk and storage tanks in Iowa, principally at Council Bluffs, from which deliveries are made in Iowa and to other states, the maintenance and operation of a refinery at Carter Lake, Iowa, where gasoline is manufactured, blended and compounded in the State of Iowa and stored in bulk and storage tanks from which tanks the gasoline so stored is shipped to points in Iowa and to other states.

That the company maintains many service stations in Iowa, selling gasoline to customers of these stations.

That the company was required to and did take out a distributor's license in Iowa, authorizing it to engage in the business of a distributor of motor vehicle fuel in Iowa.

That from May, 1927 to May, 1932, the Treasurer of Iowa collected the total sum of $461,699.83 as license fees on gasoline, all of which was paid under legal duress imposed by the statutes, whereby a failure to pay would subject the company to statutory penalties, cancellation of its license, and criminal prosecution.

That included in the amount so paid, from January 1, 1929, to March 31, 1932, the treasurer has required the company to file reports of gasoline imported into Iowa and required the payment of .3 cents per gallon license fee computed thereon, and in addition thereto has required to be reported as gasoline imported, gasoline manufactured at Carter Lake, Iowa, and imposed and collected under the same statutory duress $134,324.70 upon the gasoline so refined and manufactured.

That in addition to the amount so illegally collected, the treasurer is now asserting the right to collect the sum of $27,455.01 as a tax on gasoline manufactured at Carter Lake, Iowa, and for failure to report the gasoline so manufactured as imported gasoline and pay the license fee based thereon, has filed ten criminal charges by preliminary information, caused indictments to be returned, has commenced civil action aided by attachment, attached the property of the company, has without notice or hearing

cancelled the license to do business as a distributor, and notified the defendant of the lack of further right to do business in Iowa.

That the treasurer continues to assert the right to collect license fees from said company, and for the months of April, May, June, July and August, 1932, has demanded reports of imported gasoline, to include that manufactured in Iowa, and has collected by threats of the penalties of the statute and of cancellation of the distributor's license, in spite of the written protest of the company, for April $10,860.75, May $10,389.12, June $12,581.07, July $7,830.03, August $9,553.68, and continues to demand such reports and payments.

The legal duress under which the payments were made, the irreparable injury to the business and property resultant from the liability to criminal prosecution which a failure to further comply with the demands of the officers and resultant from an enforcement of statutory penalties, and the resultant penalties for doing business without license, are fully pleaded as the basis for injunctive relief.

In addition to the foregoing acts of the officers under their adopted construction of the statutes, the statutes are set out in the petition.

There follows the allegations of fact as to the violation of complainant's constitutional rights by the acts of the officers in the enforcement of said statutes and by reason of the statutes themselves.

The complaint then alleges that the statutes are void and unconstitutional in that they violate the terms of the Constitution of Iowa and of the United States. That the

construction placed on the statute, and the acts of the officers thereunder, violate the constitutional rights of complainant granted by the Constitution of Iowa and the United States.

That Chapter 103 of the laws of the 42nd G. A., and particularly Section 1 thereof which appears as Section 4755-b5 and 4755-b38 of the Code of Iowa, 1927 and 1931, which attempts to provide a license fee of one cent per gallon on all gasoline *imported* and used, is null and void for the following reasons:

(a) That said law was never enacted in that Chapter 103 was an act to amend Senate File No. 104, of the 42nd General Assembly, and does amend such act by striking from line six thereof the word and figure "three," and from that point on nothing is enacted in lieu thereof.

(b) That the title to the act expresses no object to which the tax is applied, but refers to another law to fix such tax or object, and that such attempt to so enact the law is a direct violation of the Constitution of the State of Iowa and the sections hereinafter referred to.

(c) The tax being laid against gasoline is a property tax and is against gasoline imported and used in the state, and thereby imposes a burden on interstate commerce and denies the distributor the equal protection of the law. It is arbitrary and unjust and imposes on interstate commerce and interstate commerce business conducted by this plaintiff, a burden contrary to and in violation of the provisions of Article I, Section 10, Paragraph 2, of the Constitution of the United States relating to interstate commerce; and said provision discriminates directly

against the plaintiff as an importer of gasoline, imposing thereon a tax of one cent, while all other gasoline such as might be manufactured and used in the State of Iowa is exempt from the operation of the state statute. That said discrimination is in direct violation of Art. I, Section 10, Paragraph 2, and Art. I, Section 8 of the Constitution of the United States.

That Sections 4755-b5 and 4755-b38 of the 1931 Code of Iowa are unconstitutional and void and are a direct violation of the constitutional rights of the plaintiff as defined by the Constitution of the State of Iowa, Article III, Section 29, as follows:

> "Acts. One Subject Expressed in Title. Section 29. Every act shall embrace but one subject and matter properly connected therewith, which subject shall be expressed in the title. But for any subject which shall be embraced in the act which shall not be expressed in the title such act shall be void only as to so much thereof as shall not be expressed in the title."

Article VII, Section 7, Constitution of Iowa, which reads:

> "Tax Imposed Distinctly Stated. Sec. 7. Every law which imposes, continues or revises a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object."

That the sections last above referred to were enacted by the Legislature, and the title to said act and the act amended are fully set out and are hereby referred to. That said title to the act in no manner refers to a tax on gasoline, and this part of the subject of the act is in no manner referred to or expressed in the title of said act

and in the body thereof in no manner expresses the object to which it is to be applied. That by reason of said defect, the act is a direct violation of the Constitution of the State of Iowa, and is null and void and of no force and effect.

That the statutes last above referred to, imposing a 1 cent tax upon gasoline *imported* and used in Iowa, deprives the plaintiff of its right to protection under the United States Constitution against unjust discrimination, and is in violation of Article I, Sections 8 and 10 of the Constitution of the United States.

That said act provided for a tax upon gasoline imported and used, and thereby places a direct burden upon the interstate commerce and the business conducted by this plaintiff as interstate commerce business, and the provisions of said act deprive the plaintiff of its right to the protection of the Constitution of the United States, and is in direct contravention of Article I, Section 1, Paragraph 2 of the Constitution of the United States.

That Chapter 251-a1 of the Code of 1931, and all acts therein referred to from which said sections are derived, are each and all of them, and said chapter is unconstitutional and void and is a direct violation of the rights of the plaintiff and deprives the plaintiff of equal protection of the law, and deprives the plaintiff of its right to due process of law in said act, as it imposes upon the plaintiff the duty to report upon imported gasoline only, and attempts to compute thereon a tax of 2 cents per gallon upon all of such imports and upon such imports only, and lays the tax as against the user of gasoline for the propelling of a motor vehicle upon the highway, and attempts to enforce the payment of the tax laid against such user

upon the distributor who is in no manner liable for said tax, and thereby attempts to make said distributor responsible for the payment of a tax of a third party directly liable therefor, and such an act is in violation of the constitutional rights of the plaintiff under the constitution of the State of Iowa.

That said act provides for certain penalties and for a license to do business in the State of Iowa, conditioned upon the payment of a license fee referred to in said act, and is attempted to be enforced conditioned upon the distributor (this plaintiff) paying to the State of Iowa said license fee imposed upon said gasoline, with a penalty for their failure to report and pay the license fee for which it is not charged or made liable, without hearing or any process of law. The penalties may be inflicted and the license cancelled and the right to do business, both interstate and intrastate, thereby prevented, and that such an act containing such provisions is in direct violation of Article 1, Section 10, Paragraph 2, of the Constitution of the United States.

That the act as construed and enforced by the State of Iowa imposes a direct burden upon the interstate business of plaintiff as applied to imported gasoline only, and as so interpreted and applied deprives the plaintiff of its constitutional rights as provided for by Article I, Section 10, Paragraph 2 of the Constitution of the United States, and imposes a direct burden upon interstate commerce, in violation of the provisions of said Constitution.

That that portion of said act, insofar as the same gives to the defendant, Ray E. Johnson, Treasurer of the

State of Iowa, the right, power and authority to suspend or revoke the license of plaintiff, or purports to do so, as a method of compelling the payment of taxes alleged by him, not found to be due, and prior to any hearing or opportunity to be heard where the question of amount of liability of the plaintiff or amount overpaid can be heard or determined, is illegal, unconstitutional and void for the following reasons:

1. It is unlawful under and by virtue of the laws to thus destroy the property and business of the plaintiff as a means of compelling it to pay an alleged tax the value of which has never been determined or a hearing had thereon or afforded.

2. That to so suspend or cancel the license of the plaintiff under and by virtue of statute, as in Iowa enacted, and thus destroy the value of its property and business in the state of Iowa and in other states and its interstate business, under the facts herein set out, as a matter of compulsion to compel the plaintiff to pay an illegal tax, is in contravention of Section 1 of the Fourteenth Amendment of the Constitution of the United States, and denies to the plaintiff the due process of law guaranteed by such constitution and the constitution of Iowa, and is in contravention of the Constitution of the United States guaranteeing to the plaintiff equal protection of the law, and is in contravention of Article I, Section 10, Paragraph 2 of the Constitution of the United States relating to interstate commerce, in that it seeks to compel the plaintiff to submit to an illegal, unconstitutional burden upon its interstate commerce business under

compulsion and pain of destruction of its interstate business in Iowa and interstate business with customers outside of the State of Iowa and in the State of Iowa, and further destruction of its property, both real and personal, in the state of Iowa.

That the acts of the defendants, as hereinabove set out, and complained of, and the methods adopted by the Treasurer of the State of Iowa and by the other defendants to attempt to collect taxes claimed to be now due and such as will become due in the future, are in direct contravention of the rights of this plaintiff as guaranteed to it under the several sections of the Constitution of the United States as hereinabove referred to, and the Constitution of the State of Iowa.

That either under the statute, or under the construction of the statute by the Treasurer of the State of Iowa and its officers, in applying the same as affecting the MonaMotor Oil Company, and the acts done thereunder, and each of them, in attempting to collect the claim for unpaid taxes and in collecting all the taxes heretofore, and in attempting to collect taxes in the future, are unconstitutional and void, and directly violates the constitutional rights under each and every section of the Constitution of the United States hereinbefore specifically referred to, and the Constitution of the State of Iowa.

A temporary and permanent injunction was prayed for and the right to temporary injunction was properly urged and pressed to final hearing (Record pp. 1 to 47 incl. and 63 to 73 incl.).

———o———

The Answer.

The answer alleges that the action is against the State in violation of the Eleventh Amendment to the Federal Constitution.

That the action is one to enjoin an action pending in the District Court of Pottawattamie County, Iowa.

That from the time of the enactment of the laws relative to taxes on gasoline the plaintiff has paid the tax without protest.

That the law provides for apportionment to primary road fund, and during entire period such apportionments were made.

That bonds were issued in anticipation of the tax, in amount $100,000,000.

That by reason of such facts the plaintiff is estopped.

That the tax is an excise tax and is collected from consumers by distributors, who holds same in fiduciary capacity, and is without equity in the action, and plaintiff is in no manner prejudiced by collection by the State from it.

That no refining of gasoline has been done by plaintiff since April, 1932.

Deny that they are asserting tax on gasoline in interstate commerce.

Admit the instigation of criminal prosecution, but as against plaintiff they were dismissed.

Admit commencement of civil action.

Admit cancellation of license.

Allege that all manufactured gasoline was made from imported products, and therefore the finished product was taxable as imported gasoline.

Allege that the computation of tax is on gasoline used or disposed of (Record pp. 53 to 63 and 73 to 79).

Amendment to Bill of Complaint.

By Amendment to Bill of Complaint, Leo J. Wegman, Treasurer, Edward L. O'Connor, Attorney General; Clyde L. Herring, Governor, Joe Perry, Sheriff, are named as additional defendants, and all allegations of petition made to apply to them as the newly elected and qualified officers who took the place of former defendants.

The amendment also alleges that Section 5093-a8 as applied to the whole of the gasoline statutes and in the operation and effect of said section, violates the Constitution of Iowa and the United States in that any person buying gasoline for use other than for operating motor vehicles on highway gets refunds of 3 cents per gallon from state on blanks furnished by State, and in excess of $2,000.00 has been so refunded; that the manner of enforcement imposes a tax on the distributor for the benefit of such person who buys gasoline for any other purpose than operating motor vehicles on highway, and is not a tax for public benefit (Record pp. 63 to 73 incl.).

Amendment to Answer.

By Amendment to Answer defendants allege no duty is imposed on importer to report or pay tax till the 20

days after the fuel has come to rest in Iowa, and the report refers only to motor fuel unloaded.

That there is no discrimination in 1 cent statute as against imported gasoline.

That the officers of the state have without discrimination collected tax on all gasoline used.

Deny that any tax is imposed on gasoline used outside the state.

Deny that the refund provision of the statute violates any constitutional provision.

Deny that the officers intend to commence further criminal prosecutions and deny irreparable injury (Record pp. 73 to 78 incl.).

Evidence.

Upon the trial the record disclosed no real controversy as to facts. Many of the facts were conceded by stipulation and the record evidence is not now in dispute (Record pp. 147 to 156 incl.).

The facts as applicable to the issues are as follows:

The MonaMotor Oil Company is an Arizona corporation licensed to do business in Iowa as a foreign corporation and up to the time of the cancellation of its license, was licensed to conduct the business of a distributor of motor vehicle fuel in Iowa (Record p. 147).

The company has its principal place of business at Council Bluffs, Iowa. There it maintains bulk tanks for the storage of gasoline, a large manufacturing plant manufacturing greases, oils and products used and sold in connection with the sale of motor vehicle fuel (Record p. 148).

At Carter Lake, Iowa, which is a town directly west of Council Bluffs, on the west side of the Missouri River, but in Iowa, it maintains a large refinery and bulk and storage tanks, at which point up to April 1, 1932, it was manufacturing gasoline, and since that time, gasoline has been blended from products which were not motor vehicle fuel before blended. This gasoline so manufactured, was stored in the bulk tanks at that point, and from there distributed in Iowa, Nebraska, Minnesota and other states, shipments being made by tank car, truck and in other containers to the various points. Some of this gasoline was moved from Carter Lake to Council Bluffs bulk plant (Record p. 148).

At many various points in Iowa, the company maintains and operates service stations where gasoline is sold to users of gasoline. A part of this gasoline is that manufactured at Carter Lake, Iowa, and a part of that imported from other states. The company also sells a large amount of gasoline direct to dealers and service stations owned by others than the company. A large part of this gasoline is imported, delivered to the dealer in tank cars and containers on orders prior to shipment taken in Iowa, so that when it comes to rest in Iowa, it is the property of the consignee (Record pp. 148, 149, 150).

A large part of the business of the company is the export of gasoline to Nebraska, South Dakota, Minnesota and other states, shipments being made from Council Bluffs, Carter Lake, Shenandoah, Sioux City and other points (Record p. 150).

The first gasoline tax statute in Iowa was passed by the 41st General Assembly, Chapter 6, and became a law

April 25, 1925. The original act imposed a tax of 2 cents per gallon on "all gasoline in this state for any purpose whatsoever." The user was made liable for the tax unless previously paid (Record pp. 24 to 28 also set out in appendix).

Section 5 of the original act provided for report on or before the 20th of the month of "the total number of gallons of gasoline *imported* by him, and *the total number of gallons of gasoline sold or otherwise disposed of* for the preceding month, and shall at the same time remit the amount of its license fee for the preceding month *for which such distributor is liable*" (Record p. 25, also set out in appendix).

Under these statutes the State Treasurer required to be filed on forms, Exhibit 19, showing gasoline *imported, used and disposed of*, and collected a tax of 2 cents per gallon thereon, and the company made the required reports and paid the tax so levied (Record p. 323 and 197).

In April, 1927, the law was amended. Section 1 was changed to read: "a license fee of 2 cents per gallon, or fraction of a gallon, is hereby imposed on all gasoline *used or otherwise disposed of* in this state for any purpose whatsoever. Any person using gasoline within the state shall be liable for the fee herein provided for unless the same shall have been previously paid" (Record p. 29, see also appendix).

Section 5 was repealed and the section enacted in lieu thereof omitted the words "and the total number of gallons of gasoline sold or otherwise disposed of," and "for which such distributor is liable," therefrom.

There was also at that time enacted what is referred to as the 1 cent tax, now Section 4755-b38, Code, reading in part: 'There is hereby levied on all gasoline *imported and used* within this state a license fee of 1 cent per gallon which shall be in addition'' (Record p. 30, p. 182, see also appendix).

A new form of report was made on account of the above changes in the law and form Exhibit 3 was furnished by the Treasurer. The new form, it will be noted, provided for report of invoice gallons of container of imported gasoline only. It requires a report of all gasoline imported for any purpose, 3 per cent of invoiced gallonage is deducted and on each gallon so imported is laid a license fee of 3 cents per gallon and the distributor who by the statute is no longer made liable therefor, is required by the treasurer to pay and remit the license fee based on such report regardless of where it may be unloaded and regardless of how or where used and this is true even though the gasoline is again exported (Record pp. 291 to 294 incl., p. 197, p. 182).

From April, 1927, down to the time of the commencement of this action, the MonaMotor Oil Company made such report and remitted 3 cents per gallon on this basis, the last four months being paid under protest.

The company purchased, at Carter Lake, Iowa, a refinery and erected large bulk and storage tanks at that point, these being what were referred to as refinery tanks and Carter Lake Bulk plant. The refinery, tanks and bulk plant, while located in Iowa, were on the west side of the river adjacent to Omaha, Nebraska. The company supplied these storage tanks from two sources, one from

gasoline imported and unloaded, the other from the refinery where large quantities of crude oil and other products not imported as motor vehicle fuel were refined into gasoline and other products not motor vehicle fuel, were blended into gasoline (Record p. 148, pp. 194-195).

By some rather indefinite arrangement, the gasoline imported to Carter Lake was treated as imported into Nebraska, and the part thereof used in Nebraska was not reported as imported into Iowa, and no complaint was, or is now, being made of this erroneous method of reporting. However, all gasoline moved from Carter Lake to other points in Iowa, or manufactured, was treated by the Iowa officers as imported into Iowa from that point, although it was in fact an intrastate movement, and reports were required of this gasoline so moved, as imported gasoline, and if so moved from Carter Lake to any other point in Iowa, regardless of whether the gasoline was used in, or remained in Iowa, a 3 cent license fee was computed thereon and required to be paid by the company (Record 149, 172, 180, 181, 182, 187, 188, 189, 191, 192, 194, 195, 196; Exhibit 2, Record 233, 289).

In other words, the state officers of Iowa treated Carter Lake as a point in Nebraska or [redacted] point outside the State of Iowa, regardless of the fact, and required reports of imports on all gasoline on that basis.

This continued up into April 1, 1932, at which time it was claimed by the state that some forty cars of gasoline, during the ten months preceding April, 1932, had been moved from Carter Lake, Iowa, to Council Bluffs bulk plant, and were not reported as imported gasoline.

This was gasoline manufactured at Carter Lake, Iowa (Record pp. 171, 198-199).

The officers of the State of Iowa, immediately filed ten criminal charges, by preliminary information for making false reports, against the company and its officers, one for each month in which cars of the above classified gasoline were omitted from the report. The matter was presented to the August, 1932, grand jury, and ten indictments were returned. These charges were later dismissed as to the company, after a plea of guilty by some of the officers (Record pp. 206-208, Exhibit E, p. 171).

Immediately after the informations were filed, a demand was made of the company, that the treasurer be allowed under Section 5093-a6 of the law, and employees of the treasurer entered the premises of the MonaMotor Oil Company and made an examination of the books and records, and from this examination, Wolf & Company's audit was made. This was then made public by incorporating a part in the petition filed and by furnishing copy to the Treasurer of Nebraska, in spite of the provision that "any information gained by the treasurer of state, or such representative of the state, shall be confidential and any person divulging such information shall be deemed guilty of a misdemeanor, etc" (Record pp. 164 Ex. 10, p. 212, Ex. 1).

The audit has been offered in evidence, Exhibit 2, and is set out in the record. It discloses the demands as asserted by the treasurer in the suit, aided by attachment commenced against the company. It is before this Court as showing the construction placed upon the statutes by the officers and their manner of attempting to subject the

company to this tax, not only as to these items, but demonstrates the plan of enforcement of the law generally as against the company, past, present and future.

Following the commencement of the civil action to recover taxes, the Treasurer of the State without any notice of a day of hearing and without any hearing thereon, and without any determination of right, cancelled the distributor's license of the company issued under provision of Section 5093-a4 of the Code, the Treasurer purporting to act under the provision of Section 5093-a5, wherein provision is contained for revocation of such license, the notice stating, "From this date it shall be unlawful for you to continue to engage in the *business of distributing* motor vehicle fuel in the state of Iowa" (Record pp. 164-168).

This was claimed by the Treasurer to be his duty and done as a matter of right for a failure to report and pay those items contained in the audit (Record p. 168).

The audit discloses the following facts:

A claim is asserted under Schedule One for $18,329.34 tax by reason of a movement of gasoline from Carter Lake, Iowa, to points in Iowa. This is treated as an interstate shipment and an importation of gasoline (Record 242A Exhibit A p. 172).

It also discloses that during 1929, 1930 and 1931 and for three months ending March 31, 1933, 35,930 gallons of this gasoline moved by truck from one point in Iowa to another was reported, so there can be no question that a systematic attempt was being made to tax gasoline moved

from Carter Lake, Iowa, to other points (Record p. 243, Exhibit A, Schedule 1).

Reports were required of this class of gasoline and 1,821,286 gallons have been reported. (Record p. 323, Exhibit 18).

Under Schedule Two, a claim is asserted for $10,498.08, on account of certain tank car shipments of manufactured gasoline shipped from the refinery at Carter Lake, Iowa to Council Bluffs, Iowa. This makes the fact uncontroverted that the State was at all times, attempting to impose as against this company, a tax on gasoline manufactured in Iowa as though the same was imported into Iowa from Nebraska. In addition to the claim for these tank cars omitted, many cars so moved have been reported and the tax paid, and the officers continue to assert the right to so collect on this class of gasoline and are still requiring reports thereof and tax thereon (Record p. 247 Exhibit A, Schedule 2, Exhibit 18).

Schedule Three, a claim is asserted for five cars, referred to as direct shipments and referring to the explanation, we find the term is used to indicate car load shipments of gasoline made from the oil fields direct to the customers and dealers of the company and on Folio 8, on the audit, we find twelve more cars referred to. In the Treasurer's demand and in his civil action, we find three of these cars as making up the claim for unpaid taxes. There can be no question but that the State has been and still is, insisting upon payment of 3 cents per gallon on all gasoline imported as direct shipments from Oklahoma to the consumer in Iowa, the consumer being other than the Mona Motor Oil Company, and that its

officers require report of these interstate shipments and a tax thereon as a condition precedent to the right to conduct its business in Iowa (Record 250, Exhibit A, Schedule 3, pp. 211-212).

Schedule Four, shows the extent to which gasoline manufactured in Iowa at the refinery at Carter Lake, has been taxed in the past merely because moved from points in Carter Lake, Iowa, to other points in Iowa. This is not gasoline imported into Iowa, but has been so treated and 1,508,034 gallons has been required to have been reported and the tax paid and because of a difference between invoice gallonage and reported gallonage, a further claim of $548.85 is being asserted (Record p. 250, Exhibit A, Schedule 4).

Since this trouble has arisen no gasoline has been refined but gasoline has been blended from products not motor vehicle fuel, and the officers are now and have been requiring report and tax on the gasoline so compounded at Carter Lake refinery (Record p. 148).

Schedule Five, again shows the systematic levy of license fee at 3 cents per gallon on imports as such. Each car shown thereon is gasoline imported into Iowa by the MonaMotor Oil Company treated as "direct shipments," and a 3 cent license fee is imposed on the invoice gallonage of container less 3 per cent regardless of whether used in Iowa or used and disposed of in Iowa. Tax has been paid on 5,312,160 gallons, 662 tank cars, and a further claim for tax on 37,293 gallons is being asserted on account of the shortage in gallonage between report and invoice, in dollars $1,085.22 is claimed. This schedule shows the taxation of imports as such, the present claim of right to

continue to assert such a tax, and of course demonstrates the intention to continue to so tax the company as an importer of gasoline.

This item is referred to in Folio 10. Gallonage difference on cars reported. Direct Shipments Detailed in Schedule 5. Folio 8 defines Direct Shipments as "The term 'direct shipment' is used to indicate carload shipments of gasoline made from the oil fields to customers and dealers of the Company" (Record pp. 242a-256, Exhibit A, Schedule 5).

Schedule 11, shows that credits were given for certain gasoline exported out of Iowa. In other words, the tax is first paid then if the gasoline is moved out of the state later, a credit on account is given. An additional credit of 206,467 net gallons, $6,194.01 is sought to be allowed by Schedule 11 (Record p. 282, Exhibit A, Schedule 11).

The civil action to collect the net amount referred to in the audit, is only incidentally referred to as showing the continuing claim of right to collect the tax from the Mona-Motor Oil Company, not with the thought that we can enjoin the State Court from carrying on its pending litigation. The pendency of that action and the officers' claims thereunder, is only evidence of a continued assertion of the right to in the future levy the tax against this company as in the past. Coupled with that fact is the fact that the officers are still requiring of the company, reports on the same form under the same fact conditions, and are still requiring the payment of the license fee each month up to the commencement of this action (Record pp. 210-232, 153-154).

It further appears in the record that in each year large amounts were paid to consumers of gasoline for other purposes than that of propelling a motor vehicle on the highway, to-wit:

From May 1925 to January 1933, $6,423,550.79 and that these payments were made as provided by Section 5093-a8 of the Code, even though the distributor paid the tax, but a gallonage 3 per cent greater is refunded, than the tax collected from the MonaMotor Oil Company. It also appears that the officers, in the enforcement of the statute, have, after collecting the tax allowed an offset on amounts for gasoline shipped out of Iowa. To illustrate:

"A" imports 100,000 gallons in tank cars January 1933; assume this is his first importation. He places this in bulk storage. He reports the tank cars, the invoice gallonage, deducts 3 per cent for evaporation and loss and pays 3 cents per gallon. Assume this gasoline remains in storage till March, 1933, when a part is shipped to Nebraska. Then on April 20th, "A" reports this as exported and a credit is given at 3 cents per gallon for the amount so exported. If he then owes additional tax, than that first paid to the amount of the credit, he can deduct the amount. He gets a credit, not a refund of the original tax paid. There is no provision in the law for such a credit. This credit is due only to the manner of enforcement by the officers (Record p. 166, Exhibit 10, pp. 173-181).

A further fact appears in the record. This tax is being asserted against the MonaMotor Oil Company on imported gasoline as such. Under the statute, gasoline blended, compounded or manufactured is not required to

be reported under the forms used nor does the statute provide for report on anything but imported gasoline (now motor vehicle fuel), and only such fuel is being taxed. By including gasoline manufactured at Carter Lake, Iowa, in required reports and treating this class as imported gasoline the company has paid Iowa license computed upon 4,477,490 gallons more than the gallons actually imported by them (Record p. 322a, Exhibit 18).

The Coryell Company has been blending large quantities of gasoline in Iowa and is not reporting or paying tax thereon. They are a competitor; a distributor in Iowa. No liability is imposed upon them as a manufacturer or compounder of motor vehicle fuel. While the state claims the right to tax as against the Coryell Company for this gasoline blended, the statute imposes no liability and to this extent at least, discrimination is shown as against the MonaMotor Oil Company as an importer (Record pp. 183, 184, 185).

The statutes are set out at length in the record and in appendix.

III.

SPECIFICATION OF ERRORS.

Point I.

That the Court erred in refusing and denying the relief sought by the plaintiff, and in dismissing the petition of the plaintiff for the following reasons, to-wit:

(a) The defendants sought and were seeking to enforce a 3 cent license fee computed on gasoline (motor vehicle fuel) based upon a 2 cent license fee contained in

Chapter 251-a1 of the Code of Iowa, 1927, which applied to part of the period, and Chapter 251-a1 of the Code of Iowa, 1931; and a 1 cent per gallon license fee upon gasoline as provided for by Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927 and on motor vehicle fuel as provided by Section 4755-b38 of the Code of Iowa, 1931, as if the same were a 3 cent license fee on the same thing, when said statutes were unconstitutional and void because in their relation to the business of the plaintiff, MonaMotor Oil Company, they were so uncertain and meaningless that the enforcement of the statute amounts to the taking of private property of the Mona Motor Oil Company without the due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, and denies to the complainant, the equal protection of the law.

(b) That Chapter 251-a1 of the Code of Iowa, 1927, and as amended and appearing in the Code of Iowa, 1931, it is in contravention of the Constitution of the United States as construed by the trial court, and in fact as authorizing the collection of a 2 cent tax on gasoline (motor vehicle fuel), as a 2 cent tax per gallon on gasoline (motor vehicle fuel) imported into the State of Iowa by the MonaMotor Oil Company, and therefore is a tax and burden upon interstate commerce and contrary to the commerce clause of the Constitution of the United States.

(c) That Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1931, is in contravention of the Constitution of the United States as construed by the trial court, and in fact, as authorizing the collection of a

1 cent tax on gasoline (motor vehicle fuel), as a 1 cent tax per gallon on gasoline (motor vehicle fuel), imported into the state of Iowa by the MonaMotor Oil Company, and therefore is a tax and burden upon interstate commerce and contrary to the commerce clause of the Constitution of the United States.

(d) That Chapter 251-a1 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, insofar as it may warrant when properly construed, the collection of a license fee of 2 cents per gallon on gasoline (motor vehicle fuel), imported into the State of Iowa for any month as a payment of the tax or license fee, not as a debt of the importer but as a tax or license fee which may or may not subsequently become due from the user or consumer of gasoline (motor vehicle fuel), is unconstitutional and void and contrary to the commerce clause of the Constitution of the United States, and denies to the MonaMotor Oil Company the equal protection of the law and amounts to the taking of private property of the MonaMotor Oil Company without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it would compel the MonaMotor Oil Company to pay the debt of another in the first instance, without any statutory or legal right to collect the same from the user or consumer.

(e) That Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, and Chapter 251-a1 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, which may be part of the provisions relating to a 1 cent tax, insofar as they may warrant when properly

construed, the collection of a license fee of 1 cent per gallon on gasoline (motor vehicle fuel), imported into the State of Iowa for any month as the payment of the tax or license fee, not as a debt of the importer, but as a tax or license fee which may or may not subsequently become due from the user or consumer of gasoline (motor vehicle fuel), is unconstitutional and void and contrary to the commerce clause of the Constitution of the United States, and denies to the MonaMotor Oil Company the equal protection of the law and amounts to the taking of the private property of the MonaMotor Oil Company without due process of law contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it would compel the MonaMotor Oil Company to pay the debt of another in the first instance, without any statutory or legal right to collect the same from the user or consumer.

(f) That the record shows conclusively that the MonaMotor Oil Company was engaged in interstate business of selling gasoline (motor vehicle fuel), in original containers, and that a large part of its business was such interstate business and insofar as Chapter 251-a1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b5 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b38 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, authorizes and compels the MonaMotor Oil Company to make reports of gasoline (motor vehicle fuel), *imported* by it and to pay 3 cents per gallon license fee or tax thereon, without statutory right of reimbursement from the purchaser of such gasoline (motor vehicle fuel),

in original containers such as tank cars, etc., the said acts are unconstitutional and void and contrary to the commerce clause of the Constitution of the United States, and denies to the MonaMotor Oil Company, the equal protection of the law, contrary to the Constitution of the United States, and amounts to the taking of private property of the MonaMotor Oil Company without due process of law, contrary to Section I of the Fourteenth Amendment to the Constitution of the United States.

(g) In view of the fact that Chapter 251-a1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b5 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b38 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and each of them, affords no method of separation of the gasoline (motor vehicle fuel), *imported* in tank cars and original containers, as a part of the interstate business of the MonaMotor Oil Company in its sale in original containers to distributors, which is a substantial part of the business of the MonaMotor Oil Company, from the business of the MonaMotor Oil Company as a retailer of gasoline (motor vehicle fuel), to enforce the statutes against the MonaMotor Oil Company, if either imposes a liability on the MonaMotor Oil Company for the payment of the tax measured by the aggregate of gasoline (motor vehicle fuel), *imported*, and computing a tax of 3 cents per gallon thereon, renders said acts and each of them in their enforcement and operation, unconstitutional and void, and contrary to the commerce clause of the Constitution of the United States as a direct burden on interstate commerce,

and denies to the MonaMotor Oil Company the equal protection of law in the conduct of its interstate business, and takes the private property of the MonaMotor Oil Company without due process of law, contrary to Section I of the Fourteenth Amendment of the Constitution of the United States.

(h) That Chapter 251-a1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and said chapter as a part of Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, insofar as it authorizes the Treasurer of the State of Iowa, without notice, as the record shows here was done, to cancel the license and authority of the MonaMotor Oil Company to engage in its interstate business of selling gasoline (motor vehicle fuel) in original containers, such as tank cars, etc., being a substantial part of its business because of the alleged nonpayment of tax or license fees, based upon and measured wholly by *imported* gasoline (motor vehicle fuel), without giving it any opportunity to be heard as to its liability therefor, or the amount thereof, amounts to and results in the destruction of its business and the taking of its property without due process of law, and contrary to Section I of the Fourteenth Amendment of the Constitution of the United States, denies to the MonaMotor Oil Company the equal protection of law.

Point II.

In view of the fact that Chapter 251-a1 of the laws of Iowa, Code of 1927 and 1931, in its relation to the interstate and intrastate business of the MonaMotor Oil Company, and its enforcement by the officials of the State of

Iowa, levies or undertakes to levy a 2 cent tax per gallon on *imported* gasoline or *imported* motor vehicle fuel, it is a tax on such *imported* property and as such on imports, and by reason thereof the Court should have declared such statutes in contravention of Sections 8 and 10, Article I, of the Constitution of the United States, and void; and erred in not so construing such acts and in not holding them unconstitutional.

Point III.

In view of the fact that the sole and exclusive measure of the amount of license fee sought against the Mona-Motor Oil Company as a distributor, under Chapter 251-a1 of the laws of Iowa, Code of Iowa, 1927 and 1931, is the amount of gasoline (motor vehicle fuel) *imported* into the State of Iowa, the tax is against *imported* gasoline or motor vehicle fuel as such, and is a direct burden on interstate commerce contrary to the commerce clause, Sections 8 and 10 of the Constitution of the United States, and void, and the Court erred in not so holding, and in not granting to complainant the relief sought, by the enjoining enforcement of the acts against it.

Point IV.

That the record shows other firms and corporations were mixing, blending and compounding gasoline and motor vehicle fuel in the State of Iowa, and that the Court erred by reason of such facts in not holding that Chapter 251-a1 of the Code of Iowa, 1927 and 1931, and Sections 4755-b5 and 4755-b38 of the Code of Iowa, 1927 and 1931, are unconstitutional and void in that the proper interpretation thereof, gasoline and motor vehicle fuel refined or compounded and blended in Iowa, and not

imported therein, was not subject to the tax or license fee, and to tax imported gasoline or motor vehicle fuel, and exempt from the tax gasoline or motor vehicle fuel refined or blended in Iowa, constitutes an illegal discrimination contrary to the commerce clause of the Constitution of the United States, Sections 8 and 10 of Article 1, and denies to the plaintiff the equal protection of the law and takes property of the plaintiff without due process of law, all contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Point V.

By Section 5093-a1 of Chapter 251-a1, Code of Iowa, 1931:

> "A license fee of two cents per gallon or fraction of a gallon is hereby imposed on *all* gasoline (motor vehicle fuel) used or otherwise disposed of in the state for any purpose whatsoever. Any person using gasoline (motor vehicle fuel) within the state shall be liable for the fee herein provided for unless the same shall have been previously paid,"

is created a liability on the "user" of gasoline (motor vehicle fuel), and to enforce such tax on the distributor who imports gasoline, because imported is to make complainant pay another's debt and constitutes the taking of private property without due process of law and renders the whole act contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, and the Court erred in not so holding and granting to the complainant the relief sought.

Point VI.

That the Court erred in dismissing the petition of the plaintiff and denying the relief sought, because the

statutes of the State of Iowa referred to hereinabove, providing for the 1 cent and the 2 cent tax on gasoline (motor vehicle fuel), were unconstitutional and void for all of the reasons set out hereinabove.

Point VII.

That the Court erred in denying to the MonaMotor Oil Company the relief sought and in dismissing its petition, and in holding that said petition and the facts supporting the same were wanting in equity, and the Court should have sustained the petition and granted the plaintiff the relief sought, for all of the grounds hereinabove stated

Point VIII.

That the Court erred in its interpretation of Chapter 251-a1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, in holding that while the tax was levied on gasoline (motor vehicle fuel) used and disposed of in the State of Iowa, it was a tax against the use of such gasoline by the consumer, and that the payment of such license fee, or tax, must be made by the distributor or importer, the MonaMotor Oil Company, plaintiff; whereas, the Court should have construed the statute as levying a tax on the user of such gasoline (motor vehicle fuel), for which the distributor, MonaMotor Oil Company, was not liable, and particularly in view of the fact that the provisions of Section 5903-a5 of said acts, which originally specifically provided for liability of distributor, were repealed from said statute prior to any of the acts complained of herein. The Court erred in dismissing the petition of the plaintiff and in denying the relief sought, based upon such erroneous interpretation of the statute.

Point IX.

The Court erred in its interpretation of Chapter 251-a1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, in holding that the ultimate consumer pays the tax or license fee even though paid in the first instance by the distributor of gasoline (motor vehicle fuel) imported into the State of Iowa, even though there is no provision in the law whereby the distributor, in this case the MonaMotor Oil Company, has any right of recovery in law from the consumer of such gasoline (motor vehicle fuel). The Court erred in dismissing plaintiff's petition and in denying the relief sought, based upon such erroneous interpretation of the statutes of Iowa.

Point X.

The Court erred in its interpretation of Chapter 251-a1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, as allowing a tax upon gasoline (motor vehicle fuel), in the hands of the user or consumer, for which the distributor is liable under the statutes of Iowa.

Point XI.

The Court erred in its interpretation of Chapter 251-a1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, as giving to the state the right to exact the payment of the license fee or tax from the distributor of gasoline (motor vehicle fuel), imported into the state as the prerequisite to its right to distribute and sell gasoline in interstate commerce, and in holding that the state had the right to compel the distributor, upon the pains and penalties of the act, to first pay the tax of another as a matter of regulation in its intrastate business

in such products. And that the court erred in dismissing the petition of the plaintiff and denying the relief to it, based upon such erroneous construction or interpretation of such alleged right of the state.

Point XII.

The Court erred in its interpretation of Section 4755-b5 and 4755-b38, Code of Iowa 1927, and as amended in Code of Iowa, 1931, and particularly, in interpreting the tax or license fee as levied by said acts on gasoline and motor vehicle fuel, the same as contained in Chapter 251-a1, when said acts specifically levy a tax on gasoline and motor vehicle fuel "imported and used in Iowa," and by reason thereof, erred in refusing the plaintiff the relief sought, and in denying plaintiff's petition on its merits.

Point XIII.

The Court erred in holding that Sections 4755-b5 and 4755-b38 were properly enacted, and in holding that they were not unconstitutional as violating Section 29 of Article 3, and Section 7 of Article 7, of the Constitution of the State of Iowa, and in denying to the plaintiff the relief sought, and in dismissing its petition by reason of such holding.

Point XIV.

The Court erred in holding and finding that plaintiff has in fact collected the tax or license fee, from users of gasoline (motor vehicle fuel), under the statutes of Iowa, for the reasons:

1. There is no provision of the statutes of Iowa under which such collection can be made, or under which recovery can be had.

2. That there is no competent evidence in the record in this case from which the Court could find, as a matter of fact, that plaintiff had collected any such tax or license fee from the user or consumer of motor vehicle fuel.

Point XV.

That the Court erred in denying to the plaintiff the relief sought and dismissing its petition and not holding that the statutes of Iowa were unconstitutional on the ground of estoppel, for the reason that there are no facts upon which estoppel could be based in the record. That the Court erred in holding and finding as a fact that plaintiff received any benefits whatsoever under the statutes of Iowa. There is no competent evidence in the record from which the Court could find, as a matter of fact, that plaintiff collected any tax from the consumer or user or retailer of gasoline (motor vehicle fuel).

Point XVI.

The Court erred in not holding the statutes of Iowa above named, both as to the 1 cent tax or license fee, and the 2 cent tax or license fee, unconstitutional and void and contrary to the Constitution of Iowa, in that the statute levies a tax on all gasoline irrespective of the manner of its use, and when the tax is paid by the distributor, or paid by the plaintiff, MonaMotor Oil Company, that part of the act which refunds the tax or license fee on gasoline used for purposes other than the propulsion of motor vehicles on the highway, in that it taxes one class of persons, to-wit, distributors of gasoline (motor vehicle fuel), for the benefit of another class of persons, gasoline (motor vehicle fuel), for the benefit of another class of

persons, to-wit, the users of gasoline (motor vehicle fuel), for uses other than the propulsion of motor vehicles on the highway; and that such exemption is so inextricably a part of the whole act, that the whole act is unconstitutional and void for said reason, and the Court erred in not decreeing that said statutes were unconstitutional for said reasons, and in denying to the plaintiff the relief sought, and in dismissing its petition.

Point XVII.

That upon the record as a whole, the Court erred in dismissing the petition of the plaintiff on its merits, and in denying to the plaintiff the relief sought, and in denying a permanent injunction against the state officers, enjoining them from enforcing said statutes of Iowa as against this plaintiff.

—o—

SUMMARY OF ARGUMENT.

I.

Appellant is entitled to equitable relief by injunction against Appellee.

1. Appellant has no adequate remedy at law for testing or resisting the Iowa Gasoline License Fee Statutes because resistance of, or noncompliance with the statutes subjects appellant to irreparable injuries at the hands of the state officials who have authority to cancel its license to do business, to impose severe fines and penalties upon it, and to fine and imprison its officers.

(NOTE: All statutes are set out in full in Appendix A.)
Code of Iowa, 1931—Section 5093-A4
Code of Iowa, 1931—Section 4755-B38.

Code of Iowa, 1931—Section 5093-C2.
Code of Iowa, 1931—Section 5093-A5.
Code of Iowa, 1931—Section 5093-A6.
Code of Iowa, 1931—Section 5093-A7.
Code of Iowa, 1931—Section 12894.
Code of Iowa, 1931—Section 12893.

Authorities:

Ex parte Young, 209 U. S. 123-157; 52 L. Ed. 714; 28 S. C. 441.
Philadelphia Co. vs. Stinson, 223 U. S. 605; 56 L. Ed. 570; 32 S. C. 340.
Truax v. Raich, 239 U. S. 33; 60 L. Ed. 131; 36 S. C. 7.
Public Service Co. v. Corby, 250 U. S. 153; 63 L. Ed. 905; 39 S. C. 440.
Western Union Tel. Co. v. Andrews, 216 U. S. 165; 54 L. Ed. 430; 30 S. C. 286.
Terrace v. Thompson, 263 U. S. 197; 68 L. Ed. 255; 44 S. C. 15.
Stafford v. Wallace, 258 U. S. 495-512; 66 L. Ed. 735; 42 S. C. 397.
Sterling v. Constanti, 287 U. S. 378-393; 77 L. Ed. 254; 53 S. C. 190.

2. The burden of the Iowa Gasoline License Fee Statutes falls upon the distributor entirely, and the distributor is the proper party to bring this action.

Code of Iowa, 1931—Sections above cited.

Authorities:

Central Transfer Co. v. Commercial Oil Co., 45 Fed. (2d) 400.
Pierce Oil Co. v. Hopkins, 282 Fed. 253.
Pierce Oil Co. v. Hopkins, 264 U. S. 137; 68 L. Ed. 593; 44 S. Ct. 251.

Anthony v. Kozer, 11 Fed. (2d) 641, 643.

Chicago Motor Club v. Kinney, (Ill.) 160 N. E. 163.

Williams vs. Riley, 280 U. S. 78; 74 L. Ed. 75; 50 S. Ct. 63.

People vs. Deep Rock Oil Corporation, (Ill.) 175 N. E. 572.

II.

The gasoline fees of Iowa are levied on the privilege of importing gasoline into the State of Iowa, and consequently are a direct infringement of appellant's constitutional rights secured by the United States Constitution, Article I, Sections 8, 9 and 10, and the 14th Amendment, Section I.

1. The license fees are levied as a condition precedent to the right to do an interstate business.

Code of Iowa, 1931—Section 4755-B38.

Code of Iowa, 1931—Section 5093-A1.

Code of Iowa, 1931—Section 5093-A2.

Code of Iowa, 1931—Section 5093-A4.

Code of Iowa, 1931—Section 5093-C2.

Code of Iowa, 1931—Section 5093-A5.

Code of Iowa, 1931—Section 5093-A7.

Authorities:

Furst v. Brewster, 282 U. S. 493; 75 L. Ed. 478; 41 S. C. 295.

Eureka Pipeline Co. v. Hallahan, 257 U. S. 265; 66 L. Ed. 227; 42 S. Ct. 101.

East Ohio Gas. Co. v. Tax Commission, 283 U. S. 465; 75 L. Ed. 1171; 51 S. Ct. 499.

Ozark Pipe Line v. Monier, 266 U. S. 555; 69 L. Ed. 439; 45 S. Ct. 184.

Alpha Cement Co. v. Massachusetts, 268 U. S. 203; 69 L. Ed. 916; 45 S. Ct. 477.

International Paper Co. v. Massachusetts, 246 U. S. 135; 62 L. Ed. 624; 38 S. Ct. 292.

Helson & Randolph v. Kentucky, 279 U. S. 245; 72 L. Ed. 683; 49 S. Ct. 279.

Pierce Oil Co. v. Hopkins, 264 U. S. 137; 68 L. Ed. 593; 44 S. Ct. 251.

Texas Company v. Brown, 258 U. S. 466; 66 L. Ed. 721; 42 S. Ct. 375.

Bowman v. Continental Oil Co., 256 U. S. 642; 65 L. Ed. 1139; 41 S. Ct. 606.

Askern v. Continental Oil Co., 252 U. S. 444; 64 L. Ed. 654; 40 S. Ct. 355.

Standard Oil Co. v. Graves, 249 U. S. 389; 63 L. Ed. 662; 39 S. Ct. 320.

Sonneborn Bros. v. Cureton, 262 U. S. 506; 67 L. Ed. 1095; 43 S. Ct. 643.

Brown v. Maryland, 7 U. S. 262; 6 L. Ed. 678; 25 U. S. 419; 12 Wheat. 419.

Pierce Oil Co. v. Hopkins, 282 Fed. 253.

Central Transfer Co. v. Commercial Oil Co., 45 Fed. (2d) 400.

2. The license fees discriminate against the importer of gasoline and in favor of the seller of gasoline manufactured, blended or compounded within the State.

Authorities:

Minneapolis Brewing Co. v. McGillvray, 101 Fed. 258.

State v. O'Leary, (Mont.) 115 Pac. 204.

State v. Sunburst Refining Co., (Mont.) 235 Pac. 428.

Sonneborn v. Cureton, 262 U. S. 506; 67 L. Ed. 1095; 43 S. Ct. 643.

Webber v. Virginia, 103 U. S. 344-350; 26 L. Ed. 565.

Tierman v. Rucker, 102 U. S. 123; 26 L. Ed. 103.

Welton vs. State of Missouri, 91 U. S. 275; 23 L. Ed. 347.
Guy v. Baltimore, 100 U. S. 434; 25 L. Ed. 753.
Walling v. Michigan, 116 U. S. 446; 29 L. Ed. 691; 68 S. Ct. 454.

3. The penalties of the statutes are so severe that they amount to a constraint against the appellant and deprive it of the equal protection of the laws and take its property without due process of law.

Authorities:

Ex parte Young, 209 U. S. 123-157; 52 L. Ed. 714; 28 S. Ct. 441.

4. The statutes creating the criminal penalties are not uniform in their operation. They grant to certain citizens or classes of citizens privileges and immunities which upon the same terms are not granted equally to all citizens.

Constitution of Iowa, Art. 1, Sec. 6.
Constitution of Iowa, Art. 3, Sec. 30.
Constitution of United States, Amendment, Art. 14 Sec. 1.
State of Iowa v. Garbroski, 111 Iowa 496, 28 N. W. 559.

5. The license fees are levied against the distributor. The officials of the State, in paying out of the fund created by the license fees, the amount of three cents per gallon to persons claiming exemptions because of non-use on the public road, are appropriating public funds for private purposes, collecting fees for other than public purposes, and consequently are depriving appellant of the equal protection of the laws and are taking appellant's property without due process of law.

Authorities:

Chicago Motor Club v. Kinney, (Ill.) 160 N. E. 163-167.

III.

The Gasoline Statutes of Iowa are null and void because they are too vague and indefinite to be capable of uniform enforcement.

1. It is a well settled rule so ancient as to entitle it to veneration, that statutes levying taxes should be construed most strongly against the government and in favor of the citizen. A tax which is too vague and indefinite to be capable of uniform enforcement, or which in a particular case depends for its enforcement upon the individual opinion and judgment of the tax officer as to liability of a person from whom the tax is sought to be collected, is null and void. A penal law which is of doubtful construction so that the tax officer must construe the law for himself as to its method of enforcement, is void. Such a law is deemed unworkable.

Authorities:

Fowler Lumber Co. v. Winslert, (Ga.) 149 S. E. 211.

Jones v. Bowman, 190 U. S. 127-141; 47 L. Ed. 979; 23 S. Ct. 678.

Davidson Bldg. Co. v. Mulock, 235 N. W. 45; 212 Iowa 730.

State v. West Side Ry. Co., 146 Mo. 155; 47 S. W. 959-961.

People v. Sweitzer, 266 Ill. 559; 107 N. E. 902-907.

State v. Board of State Canvassers, 259 Wis. 216; 150 N. W. 542.

IV.

The Statutes are mutually dependent and the invalidity of any part of any of these Statutes renders all of the statutes void.

Authorities:

Chicago Motor Club v. Kinney, (Ill.) 160 N. E. 163-169.

State v. Stanolind Pipe Line Co., (Iowa) 249 N. W. 366.

Connolly v. Union Sewer Pipe Co., 184 U. S. 540-565; 22 S. Ct. 431; 46 L. Ed. 679.

ARGUMENT.

Good government is the conduct of human affairs in an orderly manner. The United States Constitution prescribes that manner. Probably every citizen who insists on orderly taxation does so under the moral and legal condemnation of the tax authorities. There are citizens with the stamina and courage to assert their right to orderly taxation. If it were not for them and the protection of the courts, we would be governed entirely by the taxing bodies.

This appellant believes sincerely that the State of Iowa, in the enforcement of its gasoline license fee laws, has violated this appellant's privileges and immunities secured to it by the United States Constitution. This appellant appeals to this court to uphold its right to orderly government.

The Iowa gasoline license fee laws and their enforcement are unconstitutional in their application to this appellant upon the following general propositions:

A tax on imports as such violates the commerce clause. It is a burden on interstate commerce.

A tax on goods because of their origin in another state, and imported when no provision is made to tax similar goods in Iowa, is void.

A tax against importation, payment of which is a condition precedent to doing business in the state, is void.

A tax on gasoline purchased in another state, imported direct to a dealer in Iowa in original containers, is void.

A tax discriminating against the importer of gasoline and in favor of the seller of gasoline manufactured, blended or compounded within a state, is void.

A tax enactment containing penalties so severe that they amount to a constraint against the affected parties, is void.

A tax enactment appropriating funds collected from a distributor to pay to persons claiming exemptions appropriates public funds for private purposes and is void.

A tax enactment too vague and indefinite and discriminatory to be capable of uniform enforcement is wholly void.

The enforcement of payment of these taxes by statutory duress and penalties, criminal prosecutions, attachment, and the right to license made a condition precedent to payment of the tax, works irreparable injury and entitles this appellant to injunction.

MonaMotor Oil Company is a corporation duly organized and existing by virtue of the laws of Arizona

and at the time these controversies arose, had been duly licensed to do business in Iowa for many years and had been conducting an extensive business in Iowa, Nebraska, South Dakota, Minnesota and other states. This business has been continued pending the disposition of this controversy and is now being conducted in the usual manner with the exceptions stated here. One branch of the business is the importation and sale of gasoline. The imported gasoline is bought in Oklahoma and falls in different classes:

(a) Gasoline purchased outside of Iowa and shipped direct to a dealer in Iowa on his order, who is a customer of the Company. This delivery is made in original containers. This gasoline is designated as direct shipments. This class of business was carried on at all times during this controversy and is still carried on.

(b) Gasoline purchased outside of Iowa and shipped to MonaMotor Oil Company in tank cars, placed in bulk tanks of MonaMotor Oil Company in Iowa, and from these bulk and tank cars re-shipped to points in Iowa and points in other states. In Iowa the gasoline goes to the MonaMotor service stations and to other dealers. This class of business was in existence at all times during the controversies concerned here and is still in existence.

In addition to the importation of gasoline, the Company refined, manufactured and blended large quantities of gasoline from crude oil, casinghead gasoline and other products, at a refinery owned and operated by it located at Carter Lake, Iowa, a town directly west of Council Bluffs on the west side of the Missouri River. The refining, manufacturing and blending was carried on at this

point up to April, 1932 and the products were stored in bulk tanks there. Also at this point gasoline purchased outside of Iowa was imported and stored. The gasoline refined, manufactured and blended, and the gasoline imported were often mingled together in storage. The gasoline stored was moved to points in Nebraska and other states and some of it to other points in Iowa, by truck and tank car. A considerable amount of the gasoline moved by tank car was from the bulk plant at Carter Lake to the bulk plant at Council Bluffs.

The license fee statutes of which we complain require that a distributor, as a condition precedent to the right to do business, must obtain a distributor's license through the payment of a charge of one cent per gallon on all gasoline imported and used, and a charge of two cents per gallon on all gasoline used and disposed of. This payment is limited and prescribed on gasoline imported by the distributor. Failure to report and pay on imports subjects the dealer to cancellation of its license, heavy penalties, and the prosecution of its officers. Failure to pay these fees makes the distributor subject to a destruction under the penalties of the law of both its intrastate and interstate business.

The Company obtained the license and, for the privilege of doing business as a distributor, reported and paid the demands of the State up to the time of this controversy, having paid up to May 1, 1932 the sum of $461,699.83. During that time all gasoline moved from Carter Lake to other points in Iowa, whether refined, manufactured or blended at Carter Lake or not, was treated as imported gasoline by the State and a three

cent tax required against it. The tax also was required to be paid where the gasoline was shipped out of Iowa into other states. In April, 1932 auditors representing the Treasurer of the State of Iowa went upon the premises of the Company, examined the books and records and commenced to prepare an audit which was completed August 17, 1932. The auditors represented that they had found that during a period of about ten months immediately prior to April 1, 1932, the Company had failed to report forty cars of gasoline moved from Carter, Lake, Iowa to Council Bluffs, Iowa. Demand was made for the payment of $27,455.01. The Company denied that the audit was correct but, without granting it a hearing and without notice, the Treasurer of the State on October 14, 1932 cancelled the Company's license to do business, and notified the Company to cease doing business in the State. The Treasurer formerly had caused ten criminal charges for false reports to be filed against the Company and its officers jointly, and under these charges indictments were returned. The charges were dismissed later against the Company but pleas of guilty were entered by former officers who had resigned as officers of the Company. Suit was started on October 14, 1932 by the State Treasurer against the Company to recover the amount of taxes and penalties based on the audit, and a writ of attachment was issued against the Company's property.

The MonaMotor Oil Company was faced with irreparable damage to its business and property merely because it did not agree with the findings of the Treasurer's auditors and with this staring it in the face, filed this action to enjoin the State officials from destroying it,

The state continued to demand and exact the tax for April, May, June, July and August and September, 1932, when the license was cancelled and this suit was commenced.

I.

APPELLANT IS ENTITLED TO EQUITABLE RELIEF BY INJUNCTION AGAINST APPELLEES.

1. Appellant has no adequate remedy at law for testing or resisting the Iowa Gasoline License Fee Statutes because resistance of, or non-compliance with the statutes subjects appellant to irreparable injuries at the hands of the state officials who have authority to cancel its license to do business, to impose severe fines and penalties upon it, and to fine and imprison its officers.

The fines, penalties and prosecutions provided by the statutes are contained in Code of Iowa 1927, Chapter 251-A1, Sections 5093-A4, 5093-A5, 5093-A7, 5093-B1, and in Code of Iowa 1931, Section 4755-B38 and Sections 12893 and 12894. Under these statutes it is unlawful for any distributor to engage or continue in business without securing a license, and the license cannot be held unless the distributor pays the three cents per gallon license fee on all gasoline imported by him. The reports and remittances of the fees are to be made monthly. The reports also are required to be made on all gasoline imported in tank cars. If the distributor fails or refuses, for any reason, to remit the license fees on the due date, he is subjected to a penalty of ten per cent, which shall become immediately due and payable, and the Treasurer of the State is given immediate authority to revoke his license, and the license revoked may not be renewed unless the Treasurer of the State is satisfied that the ap-

plicant in the future will submit to all the requirements of the statutes. All individual distributors who in any manner violate these statutes are deemed giulty of a misdemeanor and upon conviction a fine of not less than one hundred dollars nor more than five hundred dollars is provided. If the distributor is a corporation, the statutes provide that each principal officer thereof is deemed guilty of a misdemeanor and is subjected to punishment for misdemeanors by imprisonment in the county jail not more than one year, or by a fine not exceeding five hundred dollars, or both the fine and imprisonment. No means is afforded by the statutes for the testing or questioning of the statutes in the courts. The individual distributor runs the risk of having his license to do business cancelled and of paying a fine. The corporate distributor who does not submit, runs the risk immediately of having its license to do business cancelled without hearing and its officers imprisoned and fined.

No action at law can protect the distributor who dissents. No action at law against the State or its officials can repair the destruction of its business by the cancellation of its license. No action at law against the State can protect the corporate distributor's officers from prosecution and imprisonment and fines. The corporate distributor must have the protection of the courts of equity. Otherwise it must submit to the demands of the State and it cannot assert its constitutional rights as the penalties are too severe for it to do otherwise.

In passing the gasoline license fee laws, the legislature of Iowa apparently sought to prevent any action to test the license fee statutes by distributors with courage

enough to do so, by placing heavy constraints and penalties as a condition on the right. The legislature of Iowa apparently had in mind the same result that the legislature of Minnesota had in the statutes tested before the United States Supreme Court in the case of *Ex parte Young*, 209 U. S. 123, 52 L. Ed. 714, 28 S. Ct. 441. In that case the State of Minnesota passed an act fixing two cents a mile as a maximum passenger rate to be charged by railroads in the State. For disobedience of the act, severe fines and penalties were imposed on the railroads and fines and imprisonment were imposed on their officers and agents. The penalties provided by the Minnesota legislature were closely analogous to the penalties provided in the Iowa statutes in question. In discussing the inadequacy of legal remedies in the state court, it was said:

> "To await proceedings against the company in a state court, grounded upon a disobedience of the act, and then, if necessary, obtain a review in this court by writ of error to the highest state court, would place the company in peril of large loss and its agents in great risk of fines and imprisonment if it should be finally determined that the act was valid."

In discussing the constraints placed upon the railroads by legislation of this nature, the court said:

> "The necessary effect and result of such legislation must be to preclude a resort to the courts (either state or Federal) for the purpose of testing its validity. The officers and employees could not be expected to disobey any of the provisions of the acts or orders at the risk of such fines and penalties being imposed upon them, in case the court should decide that the law was valid. The result would be a denial of any hearing to the company. The observations upon a similar question, made by Mr. Justice

Brewer in Cotting v. Kansas City Stock Yards Co. (Cotting v. Godard) 183 U. S. 79, 99, 100, 102, 46 L. Ed. 92, 105, 106, 22 Sup. Ct. Rep. 30, 38-40, are very apt: * * * 'But when the legislature in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws.' The question was not decided in that case, as it went off on another ground. We have the same question now before us, only the penalties are more severe in the way of fines, to which is added, in the case of officers, agents, or employees of the company, the risk of imprisonment for years as a common felon. See also Mercantile Trust Co. v. Texas & P. R. Co., 51 Fed. 529-543; Louisville & N. R. Co. v. McChord, 103 Fed. 216-223; Consolidated Gas Co. v. Mayer, 146 Fed. 150-153. In McGahey v. Virginia, 135 U. S. 662-694, 34 L. Ed. 304-314, 10 Sup. Ct. Rep. 972, it was held that to provide a different remedy to enforce a contract, which is unreasonable, and which imposes conditions not existing when the contract was made, was to offer no remedy; and when the remedy is so onerous and impracticable as to substantially give none at all, the law is invalid, although what is termed a remedy is in fact given. See also Bronson v. Kinzie, 1 How. 311, 317, 11 L. Ed. 143, 145; Seibert v. Lewis (Seibert v. United States) 122 U. S. 284, 30 L. Ed. 1161, 7 Sup. Ct. Rep. 1190. If the law be such as to make the decision of the legislature or of a commission conclusive as to the sufficiency of the rates, this court has held such a law to be unconstitutional. Chicago, M. & St. P. R. Co. v. Minnesota, supra. A law which indirectly accomplishes a like result by imposing such conditions upon the right to appeal for judicial relief as to work an abandonment of the right rather than face the

> conditions upon which it is offered or may be obtained is also unconstitutional. It may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights."

The court then came to the conclusion that the plaintiff might have equitable relief in a federal court of equity. It said:

> "The various authorities we have referred to furnish ample justification for the assertion that individuals who, as officers of the state, are clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action."

The rights of Mona Motor Oil Company in this case are almost identical with the rights of the Railroad in the case of Ex Parte Young, and the constraints and liabilities to prosecution are very similar. The fact that a case is pending in the state court at law to collect a portion of these taxes which the company has refused to pay in order to assert its constitutional rights, does not divest appellant of its rights to equitable relief. The fact that the filing of a suit by the State to collect the tax did not deter the State Treasurer from cancelling the appellant's license is eloquent and conclusive testimony of this fact. This action is not an action to enjoin the state courts from trying the issues at law in an action to collect the taxes.

It is an action to enjoin the state officials from destroying appellant's business and prosecuting it under unconstitutional law and collecting unconstitutional taxes from it. If appellant should be relegated exclusively to the action at law in the state court, it would have to try that case by submitting to the closing down of its business and having its officers under the penalty of imprisonment and fines should appellant fail in its test of the license fee statutes. These principles are sustained also by the following authorities:

Philadelphia Co. v. Stimson, 223 U. S. 605; 56 L. Ed. 570;

Truax v. Raich, 239 U. S. 33; 60 L. Ed. 131;

Public Service Co. v. Corboy, 250 U. S. 153; 63 L. Ed. 905;

Stafford v. Wallace, 258 U. S. 495; 66 L. Ed. 735;

Terrace v. Thompson, 263 U. S. 197; 68 L. Ed. 255;

Sterling v. Constantin, 287 U. S. 378; 77 L. Ed. 375.

2. The burden of the Iowa gasoline license fee statutes falls upon the distributor entirely, and the distributor is the proper party to bring this action.

It is orderly at this point to call to the attention of this court a fundamental error of the lower court in that part of its opinion designated "EQUITABLE RELIEF." Upon a review of the cases of this court it will be apparent that the lower court based the whole of that section of its opinion and consequently a fundamental theory of its opinion upon a false hypothesis. The lower court said:

> "It is apparent that the distributors of gasoline in Iowa have uniformly, since the statutes were first

> enacted in 1927, collected the tax therein imposed from the ultimate consumer either before or after the tax was advanced by them to the State Treasurer. It is also apparent that the complainant in this case has not only been doing this, but it has collected under the statutes which it is now seeking to hold unconstitutional, the very taxes which it is refusing to pay to the State of Iowa.

This statement is the basis for what follows in the opinion and is in no manner borne out by the record or by the facts, and this conclusion cannot be reached by legal presumption.

To determine the falsity of this hypothesis will require some construction of the statutes and we do not wish, in this division, to go into detail in this respect. Some comment on the statutes will, however, be necessary to bring ourselves within the purview of the decided cases. Under the Iowa statutes the "license fee" is due from the user "unless previously paid." The statute reads:

> "Any person using gasoline within this State shall be liable for the fee (license) herein provided for unless the same shall have been previously paid."

It must follow that if the license fee has been paid previously, the user is not liable to anyone for it. Under Sections 5093-A4 and 5093-C2 the only license designated in the Act is that license to be obtained by the distributor, so that "license fee" must be construed in connection with that license. This construction is carried through into Section 5093-A5, where we find provision for reports on gasoline imported required of the distributor, the invoice gallonage of the container in which imported, provision for deduction of three per cent thereof, the report to be filed on or before the 20th of the month, and "at the same

time he shall remit to the Treasurer the amount of the license fee for such preceding month." If the distributor fails to report or pay the *license fee*, the Attorney General shall impose penalties, the Treasurer cancel distributor's license, the company be subjected to heavy fines under the criminal statutes, and its officers be subjected to fines and imprisonment.

All duties respecting license fees are directed against the distributor only, and all penalites, civil and criminal, are aimed solely at him. No duty rests on the user, nor is any criminal statute directed toward any act or omission on the part of the user.

No power or duty is given or delegated by the act to the distributor to collect the tax from the user or anyone else. If the sale be to another distributor or dealer and not to a user, the same situation confronts the distributor; he has no power to collect the license fee. More than that, no "license fee" falls on the user for which he is liable if it has been "previously paid."

We should not have to argue under such a state of facts and under such statutes that the lower court erred in stating that the distributors "collected the tax from the ultimate consumer." The lower court fell into a common error and one which has been repeatedly litigated and decided in each instance as an error by the decisions of this court and the decisions of the courts of the states. A review of the decided cases will establish the accuracy of this statement and the error of the lower court.

We realize that Section 5093-A3 provides that a person who sells at retail motor vehicle fuel must post a placard showing "total sale price per gallon including

license fee," but this has been determined universally to mean no more than to "inform the purchasing public that the dealer is paying a tax of two cents on each gallon of gasoline sold. Such provision and such notice cannot be construed as shifting the tax from the distributor to the consumer. * * *" This quotation is from the opinion in the case of *Central Transfer Co. v. Commercial Oil Co.*, 45 Fed. (2nd) at page 403. In view of the similarity of the statutes construed in that case and the statutes we are construing, it will be helpful to quote further from that opinion. The Missouri statute provided:

> "Every dealer shall for the year 1925, and each year thereafter, when engaged in such business in this state, pay to the state treasurer an amount equal to two cents for each gallon of motor vehicle fuels sold or distributed by such dealer in this state during such year."

In answering the question, Does the distributor collect this tax from the consumer, the court said:

> "Here in the instant case as already said, the tax is laid against the distributor and dealers only. It is a matter of no legal importance, so far as concerns the matter presently in hand, whether or not the distributors and dealers pass the tax on to the consumer. It may be conceded, as a matter known of all men, that those against whom the tax is directly laid do ordinarily pass it on to the consumer. But this is a matter, not of law, but of business practice. True it is that the Missouri Motor Fuel Law, in section 30 thereof, requires a notice to be posted by a distributor segregating the price of the gasoline from the amount of the tax. But this does not preclude the dealer from selling gasoline at any price he may see fit. In effect, such a notice merely informs the purchasing public that the dealer is paying a tax of two cents

on each gallon of gasoline sold. Such provision and such notice cannot be construed as shifting the tax from the distributor to the consumer, in the teeth of this statute. * * *" (The statute is set out above.)

For a distributor's license fee as in Iowa, the reasoning of the above quoted portion of this opinion is even stronger, and particularly, when the user is expressly made only liable when the tax is not previously paid by the distributor. The language of the court in the case of *Pierce Oil Co. v. Hopkins*, 282 Fed., on page 255, so well applies that we quote the following:

"It becomes necessary to ascertain the actual effect of the statute, whatever name or description has been applied to it by the state Supreme Court (Standard Oil Co. v. Graves, 249 U. S. 389, 394, 39 Sup. Ct. 320, 63 L. Ed. 662), in order to determine whether it violates the constitution of the United States. It is doubtless true that the amount of tax usually does fall finally upon the purchaser, because the seller will naturally fix a price or an amount to be collected for the commodities sold which will include the amount of the tax. Clark v. Titusville, 184 U. S. 329, 383, 22 Sup. Ct. 382, 46 L. Ed. 569. It may also be conceded that what is ultimately gained by the purchaser for the amount of tax so included is the use of the highways for automotive vehicles propelled by gasoline. In addition, there are some of the essential elements of a tax upon the sale, or the privilege of the sale of the gasoline. The seller is required to register and to file a report of his sales, and show therein 'the amount of tax due by said seller.' The seller must pay the tax, unless he collects the amount from the purchaser. While the first section requires the seller to collect one cent per gallon from the purchaser in addition to the usual charge therefor, no usual charge is fixed by statute, and the effect of the Act is to allow the seller to fix any price he wishes, and to require him

to pay one cent per gallon for the gasoline so sold. The penalties provided in the act are all levelled against the seller. The purchaser is not required to do anything by the Act although the result may incidentally cause an enhanced price for the gasoline.

"The conclusion that the tax is not levied against the purchaser disposes of the basis of the only contention made by appellant of a violation of the Fourteenth Amendment; but it may be added that the conclusion that the tax is an excise tax on the privilege of making sales of the named products, although measured by the gallons sold for a designated use, brings the act within the proper exercise of the state's power of taxation when the commerce clause is not involved."

This case was affirmed in 264 U S. 137, 68 L. Ed. 593; 44 S. Ct. 251.

In *Anthony v. Kozer*, 11 Fed. (2nd), at page 645, it is said:

"Nor is it demonstrable that the tax that the dealer is required to pay is an added expense to the purchaser, for his motor fuel, in the exact amount of the tax. It may or may not be, with the probability in favor of the negative. No one can say that the levy of the dealer's excise tax lifts the market price of motor fuel by just that amount, or in any amount, if it comes to that. It may be that the market price of the fuel is controlled by the importers into the state. But that, again, is controlled by competition among oil producers and refiners, and by supply and demand. Of course, local conditions enter more or less into the fixing of market value, one of which may be the imposition of a local excise tax, and it may be that importers, in responding to market prices, really absorb a portion of the tax; that is to say, the market price to the dealers may be less by reason of the tax than it would be otherwise. So that it cannot be said with confidence that motor oil costs the users more by exactly the amount of the tax than it would cost them

if the tax were not imposed, nor that the user pays more by the amount of the excise paid by the dealer for his motor fuel. The amount of the tax is therefore an unreliable standard as a toll against the driver of an automobile for the privilege of operating his car upon the highways."

The language of Thompson, J., in the case of *Chicago Motor Club v. Kinney*, (Illinois), 160 N. E. 163, so well applies that we quote the following:

"The business of marketing gasoline is a highly competitive business, and those engaged in it sell the same grade and quality of gasoline at different prices. The cost of production of gasoline varies so widely because of differences in the cost of drilling oil wells, quantity and quality of oil produced by a well, cost of refining, conveniences of transportation, methods of business and other conditions and items of cost too numerous to mention, that it does not control the price to the consumer. Into the cost of gasoline to the distributor, as defined in the act, must enter items of labor, transportation, taxes of every character, and many other items, and he must sell this gasoline in competition on the open market. Because of local conditions he may sell the same grade of gasoline in one community for one price and in another community for another price. A distributor in Illinois may absorb all of the tax imposed by the Motor Fuel Tax Act in one instance and a portion of it in another, and in still another instance he may pass on to the ultimate consumer the entire cost of this item. The proprietor of a garage, filling station, or curb pump who actually fills the fuel tank of the motor vehicle is not required to pay the tax of 2 cent per gallon on all fuel sold by him unless he is also an importer, producer, refiner or manufacturer of motor fuel, nor is he either required or authorized to collect from the consumer, as such, a tax of 2 cents a gallon on motor fuel to be used for any purpose. If he be a distributor

within the meaning of the act, he may or may not add to the price of gasoline sold by him the 2 cents which he has paid to the state, the same as he may or may not pass on to the same consumer the amount of tax he paid on his real or personal property used in the business. In short, the tax imposed by the Motor Fuel Tax Act is merely one of the items of cost to the distributor and it enters into the cost to the ultimate consumer just as any other item does. Therefore, if a consumer purchases his gasoline at a point in the state where competition is keen and the motor fuel tax is absorbed in whole or in part by the distributor or one or more of the dealers between the distributor and the ultimate consumer, and then receives from the state, in the nature of a refund, a payment of 2 cents on each gallon of motor fuel used by him for a purpose other than operating a motor vehicle on the highway of the state, he has received a gift from the public treasury in violation of Section 20 of Article 4 of our state constitution, and the distributor taxed for the purpose of raising the fund to provide this gift to the consumer has been deprived of his property without due process of law, in violation of the national and state Constitutions. * * * *

"Eliminating from the act the void sections 6, 7 and 10, we have an act which imposes a tax upon all distributors of all fuels suitable and practicable for operating motor vehicles, excepting kerosene, and places all of the fund thereby created in the special fund in the state treasury known as the road fund. No user of gasoline or other fuel suitable and practicable for operating motor vehicles would be exempted and none of the fund would be apportioned to the several counties of the state. Such an act is not the act that was passed by the General Assembly, and it is evident that the act would not have been passed without sections 6 and 10. Where the different objects of an act are so dependent upon or so mutually connected with each other in meaning or as conditions,

considerations or compensations for each other that it cannot be presumed the Legislature would have enacted the provisions designed to secure one of the objects without the provisions for the other, the invalidity of the latter renders the whole act void. People v. Martin, 178 Ill. 611, 53 N. E. 309; Springfield Gas & Electric Co. v. City of Springfield, 292 Ill. 236, 126 N. E. 739, 18 A. L. R. 929; Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 22 Sup. Cts. 431, 46 L. Ed. 679; Cooley on Const. Lim. (7th Ed.) p. 246."

In *Williams v. Riley*, 280 U. S. 78, 74 L. Ed. 175, 50 S. Ct. 63, in the opinion of Mr. Justice McReynolds, the same rule is applied.

In the light of the above cited and quoted decisions, it becomes clear that the lower court in the case at bar attempted to read something into the Iowa gasoline license fee statutes that cannot be found in them in order to support their constitutionality. In *Subdivision* 8, *at page* 198 *of the 3rd Federal Supplement Volume*, in its reported opinion the court says:

> "This provision in section 509-A5 is not as clear as it should be, but in the light of the other provisions of the statute, it is perfectly apparent that it was the intention of the Legislature that payment should be made on the 20th day of each month for all gasoline imported during the preceding month, unloaded and *to be used or consumed within the state of Iowa.* (Italics ours.) It is very apparent that the distributor may be required to pay some of the license fees in advance, based upon the report filed if he has not collected on all of the gasoline imported and unloaded by him during the preceding month."

This opinion was made in face of the fact that the provision that the distributor's report showed only the gasoline "to be used or disposed of within the state" was

repealed in 1927, and in face of the fact that, as a matter of law, the burden of this tax never shifts to the user and never is in fact collected from the user. The lower court refers to "apparent legislative intent," but this cannot be supported. In *Subdivision* 9 of the reported opinion the court stated:

> "That it was the intention of the Legislature to require of the distributor payment of the tax, but that it should not be a tax assessed against him but only as an administrative feature in the enforcement of the act, is clearly shown by an amendment to section 5093-A5 which was made by the 42nd General Assembly in 1927."

Then the court quoted the old and the new sections which we have set out. After this quotation the court said:

> "It is observed then that the Legislature took out of the original act the statement, 'and the total number of gallons of gasoline sold or otherwise disposed of,' and also the phrase, 'for which such distributor is liable.' It is perfectly apparent therefore that the purpose and intention of the Legislature was to omit from the act any statements therein that could in any wise be interpreted as an intention on their part to levy a tax on the gasoline sold or otherwise disposed of by the distributor and which might be construed as making the distributor primarily liable for the tax itself."

Again, we cannot follow logically the lower court's construction of "apparent legislative intent." The omission of original portions of the original act changed its whole meaning.

If it was the intention of the Legislature to make the distributor pay the license fee in the first instance, then it must of necessity be "previously paid" so far as a user

is concerned and in that event we have a tax for which no one is liable for its payment. It is true that a part of the original act repealed relieves the distributor of liability for the tax as a tax on gasoline and the duty of reporting the gasoline sold or otherwise disposed of, so that as a tax on property sold or used in the state, or an excise based on sale no longer could be claimed to exist as to the distributor, but the burden of a license fee remained. He could not remain in business without state license and he could not have the license without payment of the license fee, computed not on gasoline "sold or otherwise disposed of," but on invoiced gallonage of each container *imported,* less three per cent. Even the original act did not specify that the sale or disposition was to be for use in the state.

The lower court says that it was very apparent that the distributor was to be relieved of liability for the tax, yet by this method of relief, a greater burden than ever before, on the distributor, results. He must now pay on every gallon he imports regardless of use and where or when disposed of, as a condition precedent to his right to conduct the business of a distributor legally, and this result, the lower court says, is obtained by the "apparent intent to relieve him from liability" for the so-called tax. No provision is added to the act whereby the tax can be collected from the user, either by the state or the distributor. The officers of the state have never made any attempt to assert this tax against a user, and as a practical matter it is impossible to do so.

Why, then, the fiction of trying to say this is the user's tax? It is in fact just what the statute says it is:

a license fee, computed on the gasoline imported, charged against the distributor as a condition precedent to his right to do business in the state. Nor is the final conclusion of the court justified, wherein, on *page* 199, the lower court says:

> "Upon consideration of the entire act the intention of the Legislature is readily apparent: First, a levy is made upon all motor vehicle fuel used or consumed in the state; second, the person or persons using the fuel within the state are made liable for the payment of the fees; third, a refund is granted to users of such motor vehicle fuel other than users on the public highways; and, fourth, the distributor for the privilege of selling and dispensing of gasoline within the state of Iowa, is to be a toll collector and administer the collection of the tax making his reports as required by Section 5093-A5, and in either paying or advancing the tax on the 20th day of the month following that on which the gasoline was imported and unloaded by him."

This construction has been urged many times by the users of gasoline in interstate commerce under similar statutes, by the users of gasoline on federal highways whereby it would be deemed a toll, by cities and municipalities claiming exemption from taxation, and in every instance the acts are never construed as placing any burden on the user.

While some courts have placed upon the gasoline statutes the construction that the excise tax is upon the user of a motor vehicle on the highway measured by the gallons consumed at a fixed price per gallon, with provision for the distributor or dealer to collect the tax from the user, we find in every such act a direct provision for such a levy against the user and a direct provision for

burden of collection by the distributor or dealer from the user coupled with a duty to remit. The best illustration of the two forms of the statute is found in the decisions of the Supreme Court of Illinois, under which the first statute was almost identical in form with the present Iowa statute; the second was changed to lay the tax on use of the highway with a duty only on the dealer to collect. The first was declared unconstitutional; the second was found to be a proper method of taxation.

The first opinion is found in the case of *Chicago Motor Club v. Kinney*, (Ill.) 160 N. E. 163, supra. The provision of the act construed as laying the tax on the distributor is identical with the Iowa statute:

> "Section 4 requires those acting as distributors after July 31, 1927, to report to the department of finance on or before the 20th day of each calendar month the amount of motor fuel purchased, imported, produced, refined, compounded, manufactured, received, sold, distributed or used by them during the preceding calendar month and the amount on hand at the close of business for such month." Section 5 reads:
>
> "At the time of making the monthly return, the licensee shall pay as a license tax to the department of finance, two cents for each gallon of motor fuel sold or used by him during the period covered by the return. In making the computation of tax due, three per cent shall be deducted from the total amount of motor fuel sold or used by the licensee as allowance for evaporation and other loss."

Quoting further:

> "It is an occupation tax imposed on distributors of motor fuels as defined in the act."

The first act being declared unconstitutional as violating provisions of both State and Federal Constitutions and a second act was passed. This is construed in the case of *People v. Deep Rock Oil Corporation,* (Ill.) 175 N. E. 572. The act is set out as follows:

> "Section 2 (Smith-Hurd Rev. Stat. 1929, c. 120, s. 418) provides: 'A tax is hereby imposed on the privilege of operating motor vehicles upon the public highways of this state after July 31, 1929, at the rate of three cents per gallon of all motor fuel used in such motor vehicles upon such public highways.'"

The second act was declared valid. The direct levy of the tax for use of motor vehicles on the highways against the user, and the direct provision for collection by the distributor follows.

It seems to us that the lower court, in the case at bar, is attempting to do by construction that which the Legislature of Illinois was required to do by direct provision. We cannot believe the court has the broad power to legislate by judicial construction. In any event, the opinion runs counter to the decision of this court construing another statute almost identical with that of Iowa. We refer to the statutes of California in the case of *Williams v. Riley,* 280 U. S. 78, 74 L. Ed. 175; 50 S. Ct. 63. The California statute is referred to, and the following brief outline is given. Quoting:

> "By the Motor Vehicle Fuel Tax Statutes, Chap. 267, Act 1923, Chap. 359, Act 1925, and Chaps. 716, 795, Act 1927, the California Legislature defined motor vehicle fuel and directed that all distributors of it should be licensed and pay taxes to the Comptroller of the State, amounting to three cents per gallon sold, less an allowance of one per centum. These statutes

> further provide for reimbursing purchasers of fuel not used for operating vehicles upon public highways."

The same statement could be made of the Iowa statute.

Quoting further:

> "Appellants, along with thousands of other citizens and taxpayers of California, operate motor vehicles along the highways. They have procured, and must hereafter procure, the necessary fuel from licensed distributors at prices enhanced by the amount of the three cent tax."

The relief was denied the user of gasoline because no direct burden was placed upon him by such an act. The decision of this case should be controlling and decisive on this question.

The act of 1927 had one further provision. Section 8 provided for an inventory of all gasoline on hand or in storage at midnight April 1, 1927, upon which the license fee had not been paid, and the immediate remittance of the license fee thereon. This provision negatives any idea of an excise tax for use of a motor vehicle upon highways for which the user is liable and the distributor the collector. All gasoline on hand or in storage, no matter where or when it may be used, and regardless of how used, is made a basis for computation of this part of the license fee of the distributor, and again no provision is made for reimbursement from the user.

The conclusion inevitably follows that the Iowa gasoline license fee statutes are taxes on property in the hands of the distributor; that the distributor is solely the one responsible for the payment, and solely the one af-

fected by the enforcement of the laws, and that the distributor is the proper party to come into this court to get equitable relief.

II.

THE GASOLINE LICENSE FEES OF IOWA ARE LEVIED ON THE PRIVILEGE OF IMPORTING GASOLINE INTO THE STATE OF IOWA AND CONSEQUENTLY ARE A DIRECT INFRINGEMENT OF APPELLANT'S CONSTITUTIONAL RIGHTS SECURED BY THE UNITED STATES CONSTITUTION, ARTICLE I, SECTIONS 8, 9 AND 10, AND THE 14TH AMENDMENT, SECTION 1.

1. The license fees are levied as a condition precedent to the right to do an interstate business.

The statutes which we are challenging are made applicable to all distributors who bring gasoline into the state. Reports and payments are required by the statutes only on gasoline imported. Payment of the license fee on this gasoline immediately after it crosses the state border is required absolutely as a condition precedent to the distributor's right to do business, regardless of the fact that the gasoline may be en route to another state, regardless of the fact that the distributor may be sending the whole of it out into another state and regardless of the fact that the shipment may be a direct shipment from outside the state to a purchaser within the state on orders taken prior to shipment. The tax is not upon the gasoline as it comes to rest, but is on the privilege of the distributor to do business. Where the distributor is exporting the gasoline to another state, the license fee nevertheless must be paid by him. On this interstate business the license fee is levied indiscriminately on the distributor regardless of

interstate and intrastate business. MonaMotor Oil Company is a distributor conducting indiscriminately an interstate and intrastate business at the same stations and bulk plants, and the privilege of conducting these two lines of business is not subject to separation. The Iowa statutes make no provision for separation of the two classes of business. To conduct both classes of business it must have at all times a license, and as a condition to the privilege of conducting the business, it must pay a charge equal to three cents on the invoiced gallonage of each container, tank car, truck or other vehicle in which motor fuel is imported, less three per cent for shrinkage, regardless of when, where or how used or sold.

A distributor is defined as being one who brings gasoline into the state or who produces, refines, manufactures or compounds within the state any gasolines to be used within the state or sold or otherwise disposed of by him within the state for use in the state. In this definition, however, we find the only attempt at a limitation on the statutes. It is not made, however, a restriction on the application of the statutes as the remainder of the statutes applicable do not confine the payment of the license fees to gasoline sold for use within the state, but, on the contrary, require payment on the privilege of importing and disposing of gasoline, whether within or without the state. The conclusion is inescapable that this is a direct charge on the privilege of importing and of conducting an interstate business.

The Iowa taxes being license fees levied on the privilege of importing gasoline and on the privilege of conducting the business of a distributor, whether interstate

or intrastate, we fall squarely within the rule of the case of *Bowman v. Continental Oil Company*, 256 U. S. 642, 65 L. Ed. 1139. In that case it was shown that the plaintiff (Continental Oil Company) was engaged indiscriminately in intrastate and interstate commerce through the same stations and plants within the State of New Mexico. Its interstate commerce consisted of about 5.5% of its business which was conducted by making sales of petroleum products brought in from other states, in original barrels, packages or tank cars without breaking the packages, to consumers within the state. Its intrastate commerce consisted of about 94.5% of its business in making sales from broken packages, barrels and tank cars to consumers within the state. The State of New Mexico required the payment of an annual license fee of fifty dollars for each distributing station or place of business regardless of the type of commerce conducted there. The court held that the license tax applied to a privilege in which the interstate and intrastate elements were inseparable and that consequently the license tax constitated a burden on interstate commerce and was void. We quote pertinent sections from the opinion:

> "But with the license tax it is otherwise. If the statute is inseparable, then both by its terms and by its legal operation and effect this tax is imposed generally upon the entire business conducted, including interstate commerce as well as domestic; and the tax is void under the authority of Leloup v. Mobile, 127 U. S. 640, 647, 32 L. Ed. 311, 314, 3 Inters. Com. Rep. 134, 8 Sup. Ct. Rep. 1380; Crutcher v. Kentucky, 141 U. S. 47, 58, 59, 35 L. Ed. 649, 652, 653, 11 Sup. Ct. Rep. 851; Williams v. Talladega, 226 U. S. 404, 419, 57 L. Ed. 275, 281, 33 Sup. Ct. Rep. 116; and other cases of that character.

"Upon the questoin of severability, we are constrained to concur in the view adopted by the district court; and this notwithstanding our hesitation, in advance of a declaration by the court of last resort of the state, to adopt a construction bringing the law into conflict with the Federal Constitution. The act, in its 2nd section, requires every distributor of gasoline to pay an annual license tax of $50.00 for each distributing station or place of business or agency; requires it to be paid in advance; and renders it unlawful to carry on the business without having paid it. Section 8 declares that any person who shall engage or continue in the business of selling gasoline without a license shall be deemed guilty of a misdemeanor, and, upon conviction, be punished by fine or imprisonment, or both. The subject taxed is not in its nature divisible, as in the case of the excise tax. The imposition falls upon the entire business indiscriminately; and so does the prohibition against the further conduct of business without making the payment. By accepted canons of construction, the provisions of the act in respect of this tax are not capable of separation so as to confine them to domestic trade, leaving interstate commerce exempt. United States v. Reese, 92 U. S. 214, 221, 23 L. Ed. 563, 565; Trade-Mark Cases, 100 U. S. 82, 99, L. Ed. 550, 553; Poindexter v. Greenhow, 114 U. S. 270, 304, 305, 29 L. Ed. 185, 197, 198, 5 Sup. Ct. Rep. 903, 962; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 636, 39 L. Ed. 1108, 1125, 15 Sup. Ct. Rep. 912.

"No doubt the state might impose a license tax upon the distribution and sale of gasoline in domestic commerce if it did not make its payment a condition of carrying on interstate or foreign commerce. But the state has not done this by any act of legislation. Its executive and administrative officials have disavowed a purpose to exact payment of the license tax for the privilege of carrying on interstate commerce. But the difficulty is that, since plaintiff, so far as

appears, necessarily conducts its interstate and domestic commerce in gasoline indiscriminately at the same stations and by the same agencies, the license tax cannot be enforced at all without interfering with interstate commerce unless it be enforced otherwise than as prescribed by the statute,—that is to say, without authority of law. Hence, it cannot be enforced at all."

The court enjoined the state from collecting the license fee from the plaintiff. MonaMotor Oil Company is entitled to the same relief against the State of Iowa. In both states the imposition falls upon the entire business indiscriminately, and so does the prohibition against the further conduct of the business without making payment. The provisions of the act in respect to this tax are not capable of separation so that the license fee may be levied upon the privilege of doing only an intrastate business. MonaMotor Oil Company cannot continue to conduct its interstate business without paying the license fee based upon the full amount of gasoline imported regardless of its interstate or intrastate character.

The license fee statutes of Iowa expressly give the Treasurer authority to revoke the license of a distributor regardless of the fact that the business of the distributor might entirely be interstate commerce or might be interstate and intrastate indiscriminately. The Treasurer correctly construed these statutes when he attempted to stop the business of the MonaMotor Oil Company, regardless of the fact that much of it was interstate, when he issued the order in his letter of October 14, 1932, shown as Exhibit 9, in the Transcript of Record, which is as follows:

STATE OF IOWA, TREASURER OF STATE

Des Moines, Iowa

To MonaMotor Oil Company
Council Bluffs, Iowa.
E. B. Reeser, President;
H. M. Edinger, Vice President;
Clyde Fuller, Vice President:

This is to inform you that the license issued by this department in June, 1927, authorizing you to engage in business as a licensed distributor of gasoline in the state of Iowa, is hereby revoked, all according to law. From this date it shall be unlawful for you to continue or engage in the business of distributing motor vehicle fuel in the State of Iowa.

(Signed) R. E. JOHNSON,
Treasurer of State.

Dated October 14, 1932, at 1:30 P. M.

We desire to emphasize the fact that the order made by the State Treasurer under the provisions of the statutes, prohibits the MonaMotor Oil Company from continuing to engage in the business of distributing motor vehicle fuel in the State of Iowa, and makes it unlawful for it to continue in that business when it appears without conflict, that a vast portion of the business of distributing motor vehicle fuel referred to, is the distribution in interstate commerce.

An accurate criterion is a conclusive standard of construction set up by this court: *Is one engaged exclusively in interstate business subject to the charge? Could the company, by withdrawing from its intrastate business secure the exemption?* We have shown that the business of this company is such that there can be no practical separation of its intrastate and interstate business. Assume that we should discontinue all sales in Iowa, discon-

tinue all business except from the Carter Lake bulk plant, and distribute no gasoline from there except to Nebraska. The Company must obtain a license from Iowa. To keep that license it must report to Iowa the invoiced gallonage of every car imported, even though that car may be unloaded at Lincoln, Nebraska; must pay to Iowa three cents per gallon on invoiced gallonage of containers or forfeit its license and be subject to the penalties. It must pay because it imports, even though it conducts wholly an interstate business. But the state officers say, "We give you credit for all gasoline used in Nebraska." Where is the provision in the law for such a credit? It is not there. Is the giving of a credit equivalent to no collection of the tax? Does the giving of the credit rest on the whim of the officers? The burden is imposed with no lawful method of refund, and in the case at bar the state has and is retaining of such license fees collected, $6,194.01 as shown by the Peterson audit. We can see that the tax would be imposed on MonaMotor Oil Company even though it should be engaged exclusively in an interstate business and therefore the test announced by this court in the case of *East Ohio Gas Company v. Tax Commission*, 283 U. S. 465, 75 L. Ed. 1171, 515 Ct. 499, is conclusive:

> "And, while a state may require payment of an occupation tax by one engaged in both intrastate and interstate commerce, the exaction in order to be valid must be imposed solely on account of the intrastate business without enhancement because of the interstate business done, and it must appear that one engaged exclusively in interstate business would not be subject to the imposition and that the taxpayer could discontinue the intrastate business without withdrawing also from the interstate business. Sprout

v. South Bend, 277 U. S. 163, 170-171, and cases cited."

The construction placed by the Iowa Court on a very similar statute creating a so-called license fee computed on miles of pipe line maintained, charged as against a pipe line company as a condition precedent to its right to operate in Iowa, is of great importance in that their construction of the constitutionality of that statute should control, as applied to the license fees imposed by the motor vehicle fuel statutes with equal force and effect. That is the case of *State v. Stanolind Pipe Line Company*, 249 N. W. 366, decided June 20, 1933, in which Chief Justice Kindig says:

> "Sections 8338-d6 to 8448-d12 inclusive of said chapter require the appellee, as a condition precedent to transacting its pipe line business, to pay all costs and expenses of the proceedings leading up to the granting of the permit, together with a permit fee of $1.00 per mile for each inch of diameter of such pipe line located in the State of Iowa. * * *
>
> "Under the commerce clause of the United States Constitution a foreign corporation authorized by the state of its origin to engage in interstate commerce 'may not be prevented by another state from coming into its limits for all the legitimate purposes of such commerce.'
>
> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it.
>
> "Interstate commerce, in the face of the federal Constitution, cannot be burdened or restricted by the legislation of a state. Iowa, therefore, cannot require that the appellee must pay an annual license fee for

the right of carrying on interstate commerce in the state of Iowa.

"Regardless of this principle of police power, however, the state is never justified in going beyond the scope of such limited regulation, and in the face of the commerce clause of the federal Constitution, placing a burden upon and restricting interstate commerce. See cases first above cited under this proposition. While the Iowa Legislature may, under proper circumstances, have required the appellee to pay a license fee for the purpose of reasonable inspection and regulation under its police power, yet section 8338-d13 goes farther than that. In the case at bar, the state, through section 8338-d13 sought to require an annual license fee as a condition precedent to the right of the appellee to operate in the State of Iowa. Clearly, under the authorities cited, this section of the Iowa statute is unconstitutional and void because it conflicts with the commerce clause of the federal Constitution."

The only difference in the license fee in the case at bar, is that it is computed on gallons of gasoline imported; in the pipe line case, it is measured on the miles and diameter of pipe line operated. It would seem that this construction of such a license would be binding upon this court. The lower court did not have the benefit of this construction as the opinion was handed down after the case at bar was decided.

The principles expressed in the case of *Helson v. Kentucky*, 279 U. S. 245; 73 L. Ed. 683; 49 S. Ct. 279, are pertinent. The State of Kentucky endeavored to lay a tax which in its result interfered with interstate commerce by being levied on the privilege of transacting that commerce. In that case plaintiffs were engaged in operating a ferry boat on the Ohio River between Kentucky and Illinois, do-

ing an exclusively interstate business. Plaintiffs were citizens and residents of Illinois and all of their tangible personal property had a situs in that state. The ferry boat was operated by gasoline purchased and delivered in Illinois. About seventy-five per cent of the gasoline was consumed within the limits of Kentucky while making the interstate journeys. The tax in question was computed and imposed on the use of gasoline thus consumed. The Kentucky gasoline tax applied to persons who purchased gasoline without the state and used it within the state. This court held that the Kentucky tax was exacted as the price for the privilege of using an instrumentality of interstate commerce and that the tax burdened interstate commerce and consequently was unconstitutional. In discussing the principles involved, the court said:

> "A state cannot 'lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on.' Leloup v. Mobile, 127 U. S. 640, 648, 32 L. Ed. 311, 314, 2 Inters. Com. Rep. 134, 8 Sup. Ct. Rep. 1380; Lyng v. Michigan, 135 U. S. 161, 166, 34 L. Ed. 150, 153, 3 Inters. Com. Rep. 143, 10 Sup. Ct. Rep. 725; Ozark Pipe Line Corp. v. Monier, 266 U. S. 555, 562, 69 L. Ed. 439, 442, 45 Sup. Ct. Rep. 184. While a state has power to tax property having a situs within its limits, whether employed in interstate commerce or not, it cannot interfere with interstate commerce through the imposition of a tax which is, in effect, a tax for the privilege of transacting such commerce. Adams Exp. Co. v. Ohio State Auditor, 166 U. S. 185, 218, 41 L. Ed. 965, 976, 17 Sup. Ct. Rep. 604."

Gasoline was the commodity used for propelling the ferry boat in interstate commerce in the Kentucky case:—

Gasoline is the commodity used by appellant in carrying on its interstate business through its distributing agencies located in Iowa;—Gasoline is the commodity used by appellant in conducting its business of importing gasoline into the state of Iowa. The charge under the Iowa statute is based upon each gallon of gasoline so imported.

The effect of the Kentucky tax is the same as the effect of the Iowa tax—it results in a burden on interstate commerce measured by the gallons of gasoline used in the business. However, the Iowa tax is a more drastic violation of the Constitution than the Kentucky tax. In Kentucky the tax was laid only against the privilege of consuming the commodity in Kentucky; but in Iowa the tax is levied as a condition precedent to the right of the distributor to conduct its entire business, both intrastate and interstate, and it carries severe penalties and fines against the distributor, with fines and imprisonment against its officers, which penalties have been and are being asserted against this company and its officers.

There is one other case recently decided by the Supreme Court of the United States, which we deem controlling under the facts in this record. The case we refer to is the case of *Sonneborn Bros. v. Cureton*, 262 U. S. 506, 67 L. Ed. 1095, 43 S. Ct. 643. The record in the case at bar discloses without any conflict that the Treasurer of State cancelled the license of the company to do business based upon the facts disclosed by the Peterson audit. The stipulation of facts and the Peterson audit establish without any controversy the fact that the MonaMotor Oil Company was an importer of gasoline and as a vast part of its business so conducted in Iowa by it, sold gasoline to va-

rious distributors in Iowa upon their orders taken in Iowa, and the gasoline to fill such orders was shipped direct from Oklahoma to such distributors. The Peterson audit disclosed that in the past the license fee has been computed on over 600 cars of this class of gasoline, and that the State is now asserting a further charge by reason of the discrepancy between actual and invoice gallonage upon such 600 cars, as gasoline referred to as direct shipments. In addition, the Peterson audit disclosed that the State is seeking to recover a license fee based upon five additional cars of gasoline claimed to have been omitted from the former reports. Quoting from the Peterson audit, we find, "The term 'direct shipment' is used to indicate carload shipments of gasoline made from the oil fields direct to customers and dealers of the company." The fact that the charge imposed is computed upon the importation of this class of gasoline, and the payment of that charge is, under the statute, made a condition precedent to the right of the Mona Motor Oil Company to conduct its business of distributing gasoline in Iowa, brings the facts squarely within the rule of the case last cited. The rule to which we refer is stated on p. 515 of the opinion appearing in the official report, as follows:

> "Many of the sales by the appellants were made by them before the oil to fulfill the sales was sent to Texas. These were properly treated by the state authorities as exempt from state taxation. They were in effect contracts for the sale and delivery of the oil across state lines. The soliciting of orders for such sales is equally exempt. Such transactions are interstate commerce in its essence and any state tax upon it is a regulation of it and a burden upon it. Robbins v. Shelby County Taxing District, 120 U. S. 489; Asher v. Texas, 128 U. S. 129; Stoutenburgh v.

Hennick, 129 U. S. 141, 147; Caldwell v. North Carolina, 187 U. S. 622; Rearick v. Pennsylvania, 203 U. S. 507; Brennan v. Titusville, 153 U. S. 289; Dozier v. Alabama, 218 U. S. 124; Crenshaw v. Arkansas, 227 U. S. 389; Stewart v. Michigan, 232 U. S. 665; Western Oil Refining Co. v. Lipscomb, 244 U. S. 346."

There is one other class of gasoline that has been systematically used as a basis for the computation of a part of this license fee, and that is gasoline exported by the MonaMotor Oil Company to other states. The Peterson audit disclosed that 3c per gallon, less deduction of 3%, had been paid on 577,141 gallons of gasoline imported into Iowa, which was, by the MonaMotor Oil Company, exported to other states. The case last cited concedes the rule to be that the State can impose no burden upon interstate commerce business as applied to this class of gasoline.

The license fees are wholly and absolutely unconstitutional. The injunction should be granted.

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2. The license fees discriminate against the importer of gasoline and in favor of the seller of gasoline manufactured, blended or compounded within the state.

The entire license fees are laid against imports only. The statutes levying the two cents require reports and payment only on imported gasoline. The one cent license fee refers only to gasoline imported, and reports and payments are required to be made only on gasoline imported. There is no provision of the law by which the license fee can be computed on gasoline manufactured in Iowa. The acts of the officers in requiring reports and payments on manufactured gasoline are without authority in the law. There is no authority for their acts in requiring Mona-

Motor Oil Company to report and pay on gasoline manufactured in Iowa. Their actions in this respect are solely at their own whim and without legislative authority and sanction. The legislature directed that the tax be applied based wholly upon imports. At any time, at their will, the state officers may elect to abide by the requirement of the state statutes. The fact that they are not conforming to the requirements of the statutes is no defense to the officers of the state in this action.

At this time the record of this case show that the Coryell Company has been blending motor vehicle fuel in Iowa, has sold many thousands of gallons without paying the tax thereon, and is claiming an exemption because this motor vehicle fuel was not imported and consequently was not within the scope of the statutes. It is true that the state is seeking to collect from the Coryell Company taxes on this motor fuel, but there is no evidence that it has been able to do so or that its right to do so has been established by any court of final jurisdiction. This one instance alone is sufficient to show a discrimination in favor of the seller of gasoline manufactured, blended or compounded within the state.

Even though discrimination in favor of the Coryell Company was shown at the trial of the case at bar, that proof was made in excess of caution. It is sound law that the plaintiff does not have to show more than the statute to show discrimination.

The case of *Minneapolis Brewing Co. v. McGillivray*, (C. C. D. So. Dak.) 104 Fed. 258, correctly states the law as follows:

"It was objected at the argument that the bill of plaintiff was fatally defective in not alleging that there were persons engaged in the manufacture of malt or brewed liquors within the state of South Dakota, and selling the same at wholesale. This objection is not well taken. The question is not what is actually being done under a statute that determines its constitutionality, but what may be done under and by virtue of its provisions."

The facts in that case and the case at bar are very similar. Both deal with license fees based on imports as such. The rule is again expressed in the case of

State v. O'Leary, (Mont.), 115 Pac. 204:

"Neither is it any answer to say that the conditions assumed may not arise. They may arise, and the validity of a statute is not determined by what has been done under it, but by what may be done under it. This is a well recognized rule of constitutional law. 1 Lewis Sutherland on Statutory Construction, p. 107; Minneapolis Brewing Company v. McGillivray, (CC) 104 Fed. 258."

See also

State v. Sunburst Refining Co., (Mont.) 235 Pac. 431:

"In the brief of the Attorney General it is said that gasoline and distillate manufactured in this state have not been subjected to the successive taxes indicated in example 3 above. But it is no argument in favor of the law that the officers did not enforce it. The statute very clearly authorized such successive taxes, and the test is, not what has been done under it, but what may be done under it. State ex rel Holliday v. O'Leary, 43 Mont. 157, 115 Pac. 204."

It follows therefore that the statute itself works the discrimination. When any burden is placed on goods or their sale or the right to conduct the business of selling

or on their use because of their origin in another state, and no similar burden is placed on domestic goods, the discrimination thus shown vitiates the statute. The rule is stated by this court as follows:

In *Sonneborn Bros. v. Cureton*, 262 U. S. 506, on page 516 the court said:

> "A state tax upon merchandise brought in from another state or upon its sales, whether in original packages or not, after it has reached its destination and is in a state of rest, is lawful only when the tax is not discriminating in its incidence against the merchandise because of its origin in another state."

In *Webber v. Virginia*, 103 U. S. 344, on page 350 the court said:

> "* * * The agent for the sale of articles manufactured in other states must first obtain a license to sell, for which he is required to pay a specific tax for each county in which he sells or offers to sell them; while the agent for the sale of articles manufactured in the state, if acting for the manufacturer, is not required to obtain a license or pay any license tax. Here there is a clear discrimination in favor of home manufacturers and against the manufacturers of other states. Sales by manufacturers are chiefly effected through agents. A tax upon their agents when thus engaged is, therefore, a tax upon them, and if this is made to depend upon the foreign character of the articles, that is, upon their having been manufactured without the state, it is to that extent a regulation of commerce in the articles between the states. It matters not whether the tax be laid directly upon the articles sold or in the form of licenses for their sale. If by reason of their foreign character the state can impose a tax upon them or upon the persons through whom the sales are effected, the amount of the tax will be a matter resting in her discretion. She may place the tax at so high a figure as to exclude the

introduction of the foreign article and prevent competition with the home product. It was against legislation of this discriminating kind that the framers of the Constitution intended to guard when they vested in Congress the power to regulate commerce among the several states. * * * There would otherwise be no security against conflicting regulations of different states, each discriminating in favor of its own products and citizens and against the products and citizens of other states."

In *Tiernan v. Rucker*, 102 U. S. 123. Quoting syllabus:

"That act is inoperative only so far as it discriminates against imported wines or beer. A person cannot, for selling either of them, be subjected to a higher tax than that imposed for selling wines or beer manufactured in the state."

In *Guy v. Baltimore*, 100 U. S. 434. Quoting:

"A state cannot, in the exercising of her taxing power, impose upon the products of another state, brought within the limits for sale or use, a more onerous burden or tax than upon the like products of its own territory, nor discriminate against a citizen by reason of his being engaged in thus bringing or in selling them."

In *Walling v. Michigan*, 116 U. S. 446, on page 455 the court said:

"A discriminating tax imposed by a state operating to the disadvantage of the products of other states when introduced into the first mentioned state, is, in effect, a regulation in restraint of commerce among the states, and as such is a usurpation of the power conferred by the Constitution upon the Congress of the United States."

In *Welton v. State of Missouri*, 91 U. S. 275, on page 282, quoting:

> "* * * It is sufficient to hold now that the commercial power continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character. That power protects it, even after it has entered the state, from any burdens imposed by reason of its foreign origin. The act of Missouri encroaches upon this power in this respect and is therefore, in our judgment, unconstitutional and void."

Under the rule of the foregoing decisions the fact that this whole license fee is based and computed on imports only, with no such tax or license fee based on gasoline of domestic manufacturers, brings this case completely within the rule of the foregoing cases. The statutes thus imposing the burden on imports are void.

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3. The penalties of the statute are so severe that they amount to a constraint against the appellant and deprive it of the equal protection of the laws and take its property without due process of law.

In Section 5093-a5 of the Code of Iowa, 1931, Chapter 251-a1, a penalty of ten per cent for failure to pay the license fees on time is prescribed and the Treasurer of the State is authorized to revoke the license of the distributor for failure to make payment, for the rendering of false report, or for the failure to render the prescribed reports. Here we will quote Section 5093-a7 of the same statutes because the statute itself is the most eloquent testimony of the discrimination practiced and the heavy penalties involved:

> "5097-a7. MISDEMEANOR—PENALTY. Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificate to the treasurer as herein prescribed, or

shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of gasoline, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 5093-a4, 5093-a5 and 5093-b1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor. (41 G. A., ch. 6, g. 6; 42 G. A., ch. 248, g. 6)."

The punishment for misdemeanors is prescribed by Code of Iowa, 1931, Sections 12893 and 12894, which we here set out:

"12893. PROHIBITED ACTS—MISDEMEANORS. When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor (C51, Par. 2675; R60, Par. 4302; C73, Par. 3966; C97, Par. 4905; C24, 27, Par. 12893).

"12894. PUNISHMENT FOR MISDEMEANORS. Every person who is convicted of a misdemeanor, the punishment of which is not otherwise prescribed by any statute of this state, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment (C51, Par. 2676; R60, Par. 4303; C73, Par. 3967; C97, Par. 4906; C24, 27, Par. 12894)."

A complete examination of the statutes which are shown in Appendix A of this brief discloses that no method of testing the constitutionality of the statutes is

allowed unless the party desiring to make the test wishes to submit itself to the ruin of its business by having its license cancelled pending the test, and wishes to subject itself to the penalties provided, and to subject its officers to prosecution, fines and imprisonment? If the distributor is an individual he is subjected only to a fine upon conviction.

This discrimination in the penalties against the corporate distributor on its face deprives the corporation of the equal protection of the laws secured to it by the United States Constitution. The operation of these discriminating penalties results in the deprivation of property of the corporation without due process of law.

The effect of penalties of this nature and severity is to intimidate and constrain the distributor from taking any action, either legal or equitable, in any court, either state or federal. The officers of the corporation could not be expected to question any of the provisions of the acts at the risk of fines and imprisonment being imposed upon them in case, after a legal test, these laws should be held valid. The distributor itself could not be expected to question any of the provisions of the acts at the risk of having its license to do business revoked and its entire business thus ruined. In the first part of the argument in this brief (Part I, Section 1), the opinion of the court and the language quoted in *Ex Parte Young*, 209 U. S. 123, 52 L. Ed. 714, 28 S. Ct. 441, is directly in point and again we refer to that opinion. There it was held that the effect of such legislation was to deprive the corporation of the equal protection of the laws and to take its property without due process of law.

4. The statutes creating the criminal penalties are not uniform in their operation. They grant to certain citizens or classes of citizens privileges and immunities which upon the same terms are not granted equally to all citizens.

There is a further reason why Section 5093-a7 of the Code of 1931, which creates penalties of a criminal nature for failure to do those things provided for by this Chapter 251-A1, in that said section of the act is a violation of the Constitution of Iowa and of the United States.

The Constitution of Iowa provides:

Art. 1, Sec. 6:

"Laws uniform. All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."

Art. 3, Sec. 30:

"Local or special laws—general and uniform—boundaries of counties. The General Assembly shall not pass local or special laws in the following cases:

"For the assessment and collection of taxes for state, county or road purposes;

"For laying out, opening and working roads or highways;

"For changing the names of persons;

"For the incorporation of cities and towns;

"For vacating roads, town plats, streets, alleys or public squares.

"For locating or changing county seats.

"In all the cases as above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state; and no law changing the

boundary line of any county shall have effect until, upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it."

The Constitution of the United States, Amend. Art. 14, Sec. 1, is as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make nor enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of its law."

Section 5093-a7 is not uniform in its operation. It applies only to a special class of persons, to-wit, a distributor, a railroad, a transportation company, or agent of railroad or transportation company, and to those only. This class distinction is wholly arbitrary and unjust and without reason therefor.

If the user of gasoline can be deemed liable for the tax when not previously paid, there is every reason to make such user equally amenable to the punishments provided for in this criminal statute. But such user is in no manner made subject to the provision of this act.

However, a more serious difficulty arises, due to the fact that the law is not uniform in its operation as applied to the class provided for therein. Two separate and distinct penalties are provided for the violation, in that the agent of a distributor corporation may be subjected to a fine of $500 and imprisoned for one year in

the county jail, while the agent of a distributor, or a distributor who is not a corporation can only be subjected to a fine of not less than $100, with no corresponding provision for imprisonment.

Many other inconsistencies may be cited in the operation of this statute whereby one class of persons would be subjected to one penalty, and another class or their agents be subjected to an entirely different penalty for doing the same act in the same way. We should need no further statement or argument to determine that the criminal statute directly violates the provisions of both the Constitution of Iowa and of the United States. As construing Article 1, Section 6, of the Iowa Constitution, and the equal protection clause of the 14th Amendment to the United States Constitution, we call attention to *State of Iowa v. Garbroski*, 111 Iowa 496, 28 N. W. 559. Quoting:

> "'ALL laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which upon the same terms shall not equally belong to all citizens.' That this statute grants a privilege to persons who have served in the Union army and navy, not available to others, is manifest. It is the privilege of plying the vocation of peddling outside of cities and towns without the payment of the annual tax exacted from others. This is not dependent on a present situation or condition, nor in relation or circumstances suggesting the necessity or propriety of different legislation for the exempted class. The authorities generally recognize that, for the purposes of efficient and beneficial legislation, it is often necessary to divide the subjects upon which it operates into classes. As said by Justice Field, in Railway Co. v. Mackey, 127 U. S. 205 (8 S. Ct. Rep. 1161, 32 L. Ed. 107). 'The greater

part of all legislation is special, either in the objects sought to be obtained by it, or in the extent of its application.' The extent to which division may be carried without running into special, or what is known as 'class' legislation, is sometimes difficult to determine. All the authorities agree that the distinction in dividing may not be arbitrary, and must be based on differences which are apparent and reasonable. Thus, the Supreme Court of Minnesota, in Nichols v. Walter, 37 Minn. 262 (33 N. W. 890), declared: 'The true, practical limitation of the legislative power to classify is that the classification shall be upon some apparent natural reason, some reason suggested by necessity; by such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them.' This was approved in Layalle v. Railway Co., 40 Minn. 249 (41 N. W. 974). In Johnson v. Railway Co., 43 Minn. 222 (45 N. W. 157, 8 L. R. A. 419), the same court, through Mitchell, J., said: 'It has sometimes been loosely stated that special legislation is not class, if all persons brought under its influence are treated alike under the same conditions. But this is only half the truth. Not only must it treat alike, under the same conditions, all who are brought within its influence, but in its classification it must bring within its influence all who are under the same conditions.' In State v. Hammer, 42 N. J. 439, the supreme court of New Jersey held that: 'The true principle requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as a basis of classification must be of such nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be a substantial distinction, having reference to the subject-matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. The marks of distinction on which the classification is

founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation.' The Supreme Court of Tennessee, in Sutton v. State, 96 Tenn. 696 (36 S. W. 697, 33 L. R. A. 589), very tersely states the law to be that legislation, to be constitutional and valid, 'must possess each of two indispensable qualities: First, it must be so formed as to extend to and embrace equally all persons who are or may be in the like situation or circumstances; and secondly, the classification must be natural and reasonable and not arbitrary or capricious.' To the same effect, see State v. Loomis, 115 Mo. 307, (228 S. W. 359, 21 L. R. A. 789); State v. Haun, 61 Kan. 146, (59 Pac. 341); State v. Goodwill, 33 W. Vir. 179 (10 S. E. 286, 6 L. R. A. 621); Ex parte Jentzach, 112 Cal. 486 (44 Pac. 803, 32 L. R. A. 665); City of Evansville v. State, 118 Ind. Sup. 426 (21 N. E. 267, 4 L. R. A. 93); Magoun v. Bank, 170 U. S. 283 (18 Sup. Ct. 594, 42 L. Ed. 1037). In the last case Justice McKenna, speaking of the equal protection of the laws required by the fourteenth amendment to the Constitution of the United States, said: 'It does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and the liabilities imposed.' The same court speaking through Justice Brewer, in Railway Co. v. Ellis, 165 U. S. 150 (17 Supp. Ct. 255, 41 L. Ed. 666), declared that 'the differences which will support class legislation must be of such as in the nature of things furnish a reasonable basis for separate laws and regulations.'"

5. The license fee is levied against the distributor. The officials of the state, in paying out of the fund created by the license fees the amount of 3c per gallon to persons claiming exemptions because of non-use on the public roads, are appropriating public funds for private purposes, collecting fees for other than public purposes, and consequently are depriving appellant of the equal protection of the laws and are taking appellant's property without due process of law.

In the first part of this Brief we have shown conclusively that the license fees are levied exclusively against the distributor. Under the statutes the state has provided that a user of gasoline for purposes other than propelling a motor vehicle on the public roads may claim a "refund" of 3c per gallon on all gasoline which he has purchased. He is allowed this so-called "refund" although he does not pay the tax and is not liable for it.

In paying the license fees the distributor is required to pay fees based on 3c per gallon on all gasoline imported by him, less a deduction of 3% for evaporation and loss. The one claiming a refund has no such deduction made out of the amount he is refunded. In consequence, the one getting the refund receives from the state an amount greater than the amount of taxes paid by the distributor, computed on the same gasoline.

For example, a farmer purchases 200 gallons of gasoline from a distributor for use in his farm machinery, and the farmer claims and gets a refund from the state amounting to $6.00. On the same gasoline the distributor is required to pay to the state as a license fee the amount of 3c per gallon on 200 gallons, less a deduction of 3%, the state thereby getting from the distributor the sum of $5.82. The remaining sum of 18c must come from some

source. Since there is no provision that the tax representing this amount shall be collected on the gallons of gasoline claimed to be exempt, the state goes to the general fund created by the gasoline license fees, and deducts the money. The small figures have been used for the purpose of clarity and convenience. Since the refund provision of the statute the state has made refunds amounting to $6,423,550.79 from April 1925 to December 1932, inclusive. The appellant has contributed over a half million dollars to the fund out of which this refund is made. Of this amount, 3% or $192,706.52 has in the past been refunded in excess of the amount of taxes actually collected. The distributors of gasoline have been forced to pay this to create a fund to pay out this unwarranted amount. They have been deprived of their property without due process of law in order that this refund may be made.

We call attention of the Court to the case of *Chicago Motor Club v. Kinney*, (Ill.), 160 N. E. 163. The language of the court in declaring the Illinois law unconstitutional, under an identical state of facts, is now presented to this Court as controlling:

> "We come now to the consideration of the validity of section 10 of the Motor Fuel Tax Act, which is challenged on the ground that it makes a gift of public funds to 'any person who uses motor fuel (upon which the license tax imposed by this act has been paid) for any purpose other than operating a motor vehicle upon the public highways of this state.' It is elementary that taxes can be levied for public purposes only (1 Cooley on Taxation (4th Ed.) Sec. 174; Citizens Savings & Loan Ass'n v. Topeka, 20 Wall. 655, 22 L. Ed. 455; Lowell v. City of Boston, 111 Mass. 454, 15 Am. Rep. 39), and that public funds cannot be appropriated to any private purpose (Washingtonian Home v. City of Chicago, 157 Ill. 414, 41 N. E. 893, 29 L. R.

A. 798; Deering & Co. v. Peterson, 75 Minn. 118, 74 N. W. 568). It is a violation of the due process of law clause of the national and state Constitutions to take a citizen's money from him under the guise of taxes for any other than a public purpose. Robbins v. Kadyk, 312 Ill. 200, 143 N. E. 863; Green v. Frazier, 253 U. S. 233, 40 S. Ct. 499, 64 L. Ed. 878; Water Co. v. Wade, 59 N. J. Law 78, 35 A. 4. There can be no question about the law on this subject, but it is not always easy to draw the line in all cases so as to decide what is a public purpose and what is not. Section 10 of the act in question requires the department of finance to pay to any person who uses motor fuel for any other purpose than operating a motor vehicle upon the highways of the state and upon which the license tax imposed by the act has been paid, 2 cents on each gallon of motor fuel so used, without regard to whether such person has paid the tax himself and without regard to whether he has paid into the state treasury, directly or indirectly, a sum equal to 2 cents on each gallon of motor fuel so used by him. If this be the effect of section 10, then it clearly contravenes section 20 of article 4 and section 2 of article 2 of our state Constitution and the Fourteenth Amendment to the national Constitution.

"The act under consideration does not purpose to levy a tax upon the consumer of motor fuels. It does not require the person who uses motor fuel for the purpose of operating a motor vehicle upon the highways of this state to pay a tax of 2 cents on each gallon of motor fuel so used, nor does it require the distributor of such motor fuel to collect such a tax. The tax is levied against 'a person who for sale or use in this state either imports into this state or produces, refines, compounds or manufactures in this state motor fuel.' The only person entitled to a refund under section 10 who is required by the act to pay the tax is one who imports motor fuel into this state or who produces, refines, compounds or manufactures motor fuel in this state. Such a person is

not required to pay a tax of 2 cents for each gallon of motor fuel sold or used by him, but he is required by section 5 to pay such a tax on the amount of motor fuel so sold or used, less 3 per cent of the amount. To illustrate: If a contractor engaged in the building of hard surfaced roads in this state requires a large quantity of gasoline to be used in the operation of his trucks, tractors and other motors, and imports into this state a tank car of gasoline containing 10,000 gallons, and uses the same for purposes other than the operation of a motor vehicle upon the public highways of the state, he would be entitled to a refund of $200 from the state under section 10, but he would have paid into the state treasury only $194. Thus he would receive from the state treasury for his private use and benefit $6 which he had not paid into the treasury."

* * * * * *

"Therefore, if a consumer purchases his gasoline at a point in the state where competition is keen and the motor fuel tax is absorbed in whole or in part by the distributor or one or more of the dealers between the distributor and the ultimate consumer, and then receives from the state, in the nature of a refund, a payment of 2 cents on each gallon of motor fuel used by him for a purpose other than operating a motor vehicle upon the highways of the state, he has received a gift from the public treasury in violation of section 10 of article 4 of our state Constitution, and the distributor taxed for the purpose of raising the fund to provide this gift to the consumer has been deprived of his property without due process of law, in violation of the national and state Constitutions."

The "refund" to persons claiming exemptions under the statutes, who have not paid the tax in the first instance, out of a fund collected from appellant, a distributor, and other distributors, constitutes a diversion of public funds for other than public purposes and constitutes a depriva-

tion of the property of appellant without due process of law. The "refund" to persons claiming exemptions on an amount 3% in excess of the license fees paid by appellant and other distributors upon the same gasoline, and the making up of this deficiency from a fund for which the appellant and other distributors are taxed, constitutes a deprivation of appellant's property without due process of law.

III.

THE GASOLINE LICENSE STATUTES OF IOWA ARE NULL AND VOID BECAUSE THEY ARE TOO VAGUE AND INDEFINITE TO BE CAPABLE OF UNIFORM ENFORCEMENT.

1. It is a well settled rule so ancient as to entitle it to veneration, that statutes levying taxes should be construed most strongly against the government and in favor of the citizen. A tax which is too vague and indefinite to be capable of uniform enforcement, or where the enforcement in a particular case depends upon the individual opinion and judgment of the tax officer as to liability of a person from whom the tax is sought to be collected, is null and void. A penal law which is of doubtful construction so that the tax officer must construe the law for himself as to its method of enforcement, is void. Such a law is deemed unworkable.

The rule is well stated in the language of the Court in the following case:

Davidson Bldg. Co. v. Mulock, Mayor, et al., (Ia.) 235 N. W. 45. At page 54 the Court said:

> "It is apparent that the legislature, by sections 28, 29, and 30 of Chapter 205, Acts of the 43rd General Assembly, attempted to provide a new course of procedure for appeals from the action of the board of review, attempting to provide for an appeal from said board to the county board of review, and from the

latter board to the district court. The appellant contends that the provisions of said sections are incomplete, and so vague, defective, indefinite and uncertain as to be unworkable or incapable of enforcement, and therefore void, and that by reason thereof, its appeal from the action of the board of review to the district court is the correct method of appeal under the only existing law. It is apparent that appellant is right in its contention provided the amendments hereinbefore mentioned are void by reason of unworkability. The question presented is, Are said sections of Chapter 205, Acts of the 43rd General Assembly, void? While it is the duty of the courts, if possible, to ascertain the meaning of and give effect to legislative enactments, yet, if a statute is so vague, incomplete, defective, indefinite, or so conflicting or inconsistent as to be unworkable or incapable of enforcement, it then becomes the duty of the courts to declare it inoperative and void, and the remedy lies in future legislative enactment, and not by adding to or filling up the gaps in the defective legislation by judicial legislation. See Midwest Hotel Co. v. State Board of Equalization, 39 Wyo. 461, 273 P. 696; State v. Board of Canvassers, 159 Wis. 216, 150 N. W. 542, Ann. Cas. 1916D, 159; State v. West Side St. Ry. Co., 146 Mo. 155, 47 S. W. 959; People v. Sweitzer, 266 Ill. 459, 107 N. E. 902, Ann. Cas. 1916B, 586; State v. Partlow, 91 N. C. 550, 49 Am. Rep. 652; Standard Oil Co. v. State, 178 Ala. 400, 50 So. 667; In re Hendricks, 60 Kan. 796, 57 P. 965; Sutton v. Rose, 224 Ky. 156, 5 S. W. (2d) 892; People v. Emmerson, 325 Ill. 357, 156 N. E. 474, 475; Hettinger v. Good Road Dist. No. 1 of Washington County, 11 Idaho 313, 113 P. 721; Litteral v. Blair, 139 Ky. 196, 129 S. W. 573, 575; Knight v. Trigg, 16 Idaho 256, 100 P. 1060; Ex parte Lucas, 161 Ark. 180, 255 S. W. 870; Railroad Commission of Indiana v. Grand Trunk Western Ry. Co., 179 Ind. 255, 100 N. E. 852; In re Di Torio (D. C.) 8 F. (2d) 279. In Midwest Hotel v. State Board of Equalization, 39 Wyo. 461, the Court declared:

> 'To supply omitted material in a statute is often one of the most delicate and difficult tasks which can fall to the lot of the court of last resort. It is quite true that courts should endeavor by every rule of construction to ascertain the meaning of, and give effect to, each enactment of the legislature. It is equally axiomatic under our system of government that courts may not legislate. We think, therefore, that it is deducible, both logically and from the current of authority that when a statute has been left by the law making power unfinished, and so indefinite and uncertain as to be incapable of enforcement, there remains nothing for the courts to do but to declare it void.'

"In State v. West Side Ry. Co., 146 Mo. 155, 47 S. W. 959, 961, the court said:

> 'The courts cannot venture upon the dangerous path of judicial legislation to supply omissions or remedy defects in matters committed to a co-ordinate branch of the government. It is far better to wait for necessary corrections by those authorized to make them, or, in fact, for them to remain unmade, however desirable they may be, than for judicial tribunals to transcend the just limits of their constitutional powers.'

In *People v. Sweitzer,* 266 Ill. 459, 107 N. E. 902, 907, Ann Cas. 1916B, 586, the Court used the following apt language:

> "An act is void where its language appears, on its face, to have a meaning, but it is impossible to give it any precise or intelligible application in the circumstances under which it was intended to operate."

In *State v. Board of State Canvassers,* 159 Wis. 216, 150 N. W. 542, 546 Ann. Cas. 1916D, 159, the Court made the following pronouncement:

"If the enactment is so uncertain that the Court is unable to determine, with any reasonable degree of certainty, what the legislature intended, or it is so incomplete that it cannot be executed, there is no other course open but to condemn it as void for uncertainty, as this court has done on other occasions, and other courts have done so often that the duty in that regard has become a matter of unwritten law. * * * * An intent, however manifest, not discovered in the law and capable of being vitalized, within the scope of it and fundamental restraints, must fail. As said by Lord Campbell in Coe v. Lawrence, 1 El. & B. 516, and often approved by this and other courts: 'I really cannot doubt what the legislature intended to do; but they have not carried it into effect. * * * It is better that we should adhere to the words they have used, than that we should strive to amend it.'"

IV.

THE STATUTES ARE MUTUALLY DEPENDENT AND THE INVALIDITY OF ANY PART OF ANY OF THESE STATUTES RENDERS ALL OF THE STATUTES VOID.

Chapter 251-A1 of the Code and Section 4755-b38 apply as a whole to one object. That object might be stated as the establishment of a charge or license fee, based upon gasoline imported and used, and gasoline used and disposed of, with mutually dependent provisions for the payment of such license fee by computation based upon report of gallonage of imported gasoline in the original containers in which imported, together with the mutually connected provisions as to punishment for failure to pay or report for civil penalties, and with the further mutually dependent provisions as to refunds and disbursements from this fund. The statutes and each section thereof are so clearly, mutually connected, and dependent

on each other section in meaning and in considerations, that it cannot be assumed that the Legislature of Iowa would have passed any section except as in relation to the other sections of the act on which it is mutually dependent. And it follows that the validity of any of the sections heretofore referred to, will, as a matter of course relate to and create illegality in all sections mutually dependent thereon.

This rule is established and well stated in the case of *Chicago Motor Club v. Kinney*, (Ill.) 160 N. E. 163-169. Quoting from page 169:

> "Where the different objects of an act are so dependent upon or so mutually connected with each other in meaning or as conditions, considerations or compensations for each other that it cannot be presumed the Legislature would have enacted the provisions designated to secure one of the objects without the provision for the other, the invalidity of the latter renders the whole act void. People v. Martin, 178 Ill. 611, 53 N. E. 309; Springfield Gas & Electric Co. v. City of Springfield, 292 Ill. 236, 126 N. E. 739, 18 A. L. R. 929; Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 22 S. Ct. 431, 46 L. Ed. 679; Cooley on Const. Lim. (7th Ed.) p. 246.

The same rule has been adopted by the United States Supreme Court and is effectively stated in the case of *Conolly v. Union Sewer Pipe Co.*, 184 U. S. 540-565, 22 S. Ct. 431, 46 L. Ed. 679, as follows:

> "The principles applicable to such a question are well settled by the adjudications of this court. If different sections of a statute are independent of each other, that which is unconstitutional may be disregarded, and valid sections may stand and be enforced. But if an obnoxious section is of such import that the

other sections without it would cause results not contemplated or desired by the legislature, then the entire statute must be held inoperative."

The same rule was adopted and established by the Iowa Supreme Court in its construction of the related statutes in the case of

State v. Stanolind Pipe Line Co., (Iowa) 249 N. W. 366.

This is a general rule of statutory construction universally adopted.

CONCLUSION.

MonaMotor Oil Company appeals to this court to protect and preserve its right to orderly taxation. It appeals to this court for protection against the unwarranted, unauthorized and discriminatory actions of the officials of the state of Iowa in their administration of unfair and unconstitutional laws.

We submit respectfully to this court that the statutes of Iowa, and the state officials in their enforcement, have laid upon this appellant a tax upon goods because of their origin in another state, a tax upon goods because of their importation the payment of which is made a condition precedent to doing business in the state, a tax upon goods purchased in another state imported direct to dealers in Iowa in original containers on orders taken in Iowa, a tax discriminating against the importer and in favor of the seller of gasoline manufactured, blended or compounded within the state, a tax enactment contain-

ing penalties so severe that they amount to a constraint against appellant, a tax enactment appropriating funds collected from a distributor to pay to persons who have not paid the tax and who are claiming exemptions, a tax enactment that is too vague and indefinite and discriminatory to be capable of uniform enforcement, a tax enactment discriminatory in the criminal penalties it involves. We submit to this court respectfully that if there be any right to the preservation of constitutional privileges violated by tax enactments of the nature we have described, this appellant has those constitutional rights and is entitled to the protection of this court.

The State of Iowa should be required, along with the other states of the Union, to confine within the limits of the United States Constitution its tax laws. Its remedy is simple:—A constitutional gasoline tax law. It is no great hardship to require the state to pass such a law. Since the state has chosen not to comply with the requirements of the United States Constitution, it is a more just thing to inform the state of its errors and the necessity for proper legislation so that its needs for revenue through the taxing of gasoline shall be satisfied in a constitutional manner. No bond issue of the state, and no commitment of the state, is involved. The proper remedy lies with the state legislature and a resort to such legislative remedy can work no serious harship to anyone. The injunction should be granted.

We respectfully pray that this court reverse the decision of the lower court and direct it to render judgment in favor of this appellant, granting to it the equitable relief which it seeks.

Respectfully submitted,

GEORGE S. WRIGHT,
ADDISON G. KISTLE,
PAUL E. ROADIFER,
of Council Bluffs, Iowa, and
M. D. KIRK,
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Counsel for Appellant.

APPENDIX.

The Original Act as First Adopted.

LAWS OF THE FORTY-FIRST GENERAL ASSEMBLY.

Chapter 6.

S. F. 312.

An act imposing a license fee on gasoline used or sold for use in the State of Iowa, providing for the payment, collection, refund, distribution and expenditure thereof; providing for penalties for violations of the law; amend section forty-six hundred thirty-five (4635) of the Code, 1924; and making an apporpriation for carrying out the provisions of this act.

Be it enacted by the General Assembly of the State of Iowa:

Section 1. Amount of Fee. A license fee of two cents (2c) per gallon or fraction of a gallon is hereby imposed on all gasoline in this state for any purpose whatsoever. Any person using gasoline within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided.

Section 2. Definition of Terms. (a) The term "distributor" as used in this act shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any gasoline to be used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary gasoline tank attached to and forming a part of such

motor vehicle, not more than twenty (20) gallons of gasoline without being considered a distributor.

(10) The term "person" includes, individual, partnership, corporation and association. The term "treasurer" means the treasurer of the State of Iowa.

Section 3. Price Placard—Misdemeanor—Penalty. Any person who sells or offers for sale at retail gasoline in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the sale price, the amount of the tax and the total price per gallon charged to customers on the different grades of gasoline sold. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars ($100.00), or imprisonment in the county jail for a period of not to exceed thirty days.

Section 4. Certificate Required of Distributor. Each distributor of gasoline shall, within thirty (30) days after the taking effect of this act, file with the treasurer a duly acknowledged certificate on forms prescribed and furnished by the treasurer for this purpose, showing the name under which such distributor is transacting business in the State of Iowa, the name and addresses of the several persons constituting the association or partnership, and if a corporation, the corporate name under which it is authorized to transact business and its resident general agent or other officers upon whom process may be served or who is authorized to represent it for all the purposes of

Section 5. Monthly Report—Remittance. Each distributor of gasoline shall, on or before the twentieth (20th) day of each calendar month, forward to the treasurer a state-

ment, sworn to by one of its principal officers, showing the total number of gallons of gasoline imported by him and the total number of gallons of gasoline sold or otherwise disposed of for the preceding calendar month and shall; at the same time remit to the treasurer the amount of the license fee for such preceding month for which such distributor is liable.

Section 6. Books Open to Inspection. The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of gasoline shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representative by such investigation, shall be confidential and any person divulging such information shall be guilty of a misdeameanor and upon conviction thereof, shall be liable to a fine not exceeding one thousand ($1,000.00) dollars.

Section 7. Misdemeanor—Penalty. Any distributor who shall fail to make, or refuse to make the reports to the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sales of gasoline, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 4 and 5 hereof shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred ($100.00) dollars, nor more than five hundred ($500.00) dollars.

Section 8. Reimbursement—Procedure—False Statement. Any person who shall buy or use any gasoline for

the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes, or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any gasoline for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in part or in whole upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fee paid by him, upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase, which statement shall set forth the total amount of gasoline so purchased and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in any part upon any of the public highways of this state or upon the streets of any city or town of this state and the treasurer of state shall, upon the presentation of such invoices, cause to be repaid from the funds operated by the license fees collected on the use of gasoline as herein provided, the amount of such license fee paid by such consumer on gasoline used for the purposes other than propelling motor vehices as hereinbefore provided. All applications for refunds or reimbursements as provided for in this act shall be filed with the treasurer of state on blank forms provided by him for that purpose within ninety (90) days after the date on which gasoline shall have been purchased, as shown by the invoice. Any person, firm or corporation who shall make any false statements in connection with an application for the refund of any money or license fee as herein provided for, or who

shall collect or cause to be repaid to him or any person, any such fees, without being entitled to the same under the provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one thousand ($1,000.00) dollars.

Section 9. Distribution of Proceeds. License fees collected under the provisions of this act shall be distributed and disbursed as follows: One-third (1/3) to the primary road fund, one-third (1/3) to the township road fund, one-third (1/3) to the county road fund, which county and township funds the treasurer shall apportion among the counties of the state in the same ratio that the area of the county bears to the total area of the state, and on the first day of each month shall remit to the treasurer of each county the apportionments for its county and township road fund. The county treasurer, thereupon, shall apportion such township road fund among the townships of the county in the same ratio that the number of miles of township roads in the township bears to the total number of miles of township roads within the county, and shall remit quarterly to the clerk of each township the apportionment for its township road fund.

Section 10. Refunds Quarterly. The refunds provided for in section eight (8) of this act shall be made quarterly, by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants for refunds certified to him by the treasurer of state.

Section 10-a1. Employees — Appropriation. The treasurer of state is authorized to employ such clerical and

other help as may be needed to carry out the provisions of this act, the number and compensation of such employees to be fixed by the executive council. There is hereby appropriated out of the money received under the provisions of this act sufficient funds to pay for help employed by the treasurer in enforcing the act and for making such refunds as are provided for herein.

Section 11. Act Separable. If any part of this act is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this act.

Section 11-a1. Optional Property Tax Reduction. Section forty-six hundred thirty-five (4635) of the Code, 1924, is amended by striking from line two (2) of subsection two (2) of said section the following words, "less than one mill nor."

Section 12. Publication Clause. This act being deemed of immediate importance shall be in full force and effect from and after its publication in the Iowa Legionaire, a newspaper published in the city of Des Moines, Iowa, and the Sioux City Tribune, a newspaper published in Sioux City, Iowa.

Approved April 3, A. D., 1925.

I hereby certify that the foregoing act was published in the Sioux City Tribune April 13, 1925, and in the Winterset Madisonian April 15, 1925.

W. C. Ramsey, Secretary of State.

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The First Amendment of the Original Act.

LAWS OF THE FORTY-SECOND GENERAL ASSEMBLY.

Chapter 248.

Collection of Gasoline License Fee.

S. F. 347.

An Act to amend chapter six (6) of the laws of the forty-first general assembly, and sections one (1), three (3), seven (7) and eight (8) of said chapter, and to repeal sections four (4) and five (5) of said chapter, and enact substitutes therefor, relating to the collection of gasoline license fees.

Be it Enacted by the General Assembly of the State of Iowa:

Section 1. That the law as it appears in Section one (1) of chapter six (6) of the acts of the forty-first general assembly, be and the same is hereby amended by inserting after the word "gasoline" in line two (2) thereof the words "used or otherwise disposed of."

Section 2. That the law as it appears in section three (3) of chapter six (6) of the acts of the forty-first general assembly be amended by striking from lines four (4) and five (5) thereof the following: "the sale price, the amount of the tax and the total price per gallon charged to customers on the different grades of gasoline sold," and by substituting in lieu thereof the following:
"the total sale price per gallon, including license fee, of all grades of gasoline sold, said placard to have printed thereon the words "state license fee included.' When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him."

Section 3. That the law as it appears in section four (4) of chapter six (6) of the acts of the forty-first general assembly be and the same is hereby repealed and the following enacted in lieu thereof:

"Each distributor now engaged in business as herein defined, shall within thirty days after this act becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of gasoline in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which shall contain the name under which such distributor is transacting business within the State of Iowa, and the principal place of business of such distributor, if such distributor is a firm or copartnership; the certificate shall also contain the names and addresses of the several persons constituting the same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney in fact.

Each distributor now engaged in business as herein defined, shall, within sixty days after this act becomes effective, and any person or persons desiring to engage in such business shall, before beginning the manufacture or sale of gasoline within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor, permitting such person or persons to continue or engage in business as a

licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section."

Section 4. That the law as it appears in section five (5) of chapter six (6) of the acts of the forty-first general assembly be and the same is hereby repealed, and the following enacted in lieu thereof:

"On or before the twentieth day of each calendar month each distributor of gasoline shall file in the office of the treasurer of state at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of gasoline imported by him under the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which gasoline is imported into the state of Iowa. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

"If, after the prescribed license fees are so remitted and paid, any gasoline in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state, the said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a

refund. The auditor of state shall issue his warrant drawn on the gasoline fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in section 8, chapter 6, laws of the 41st G. A.

"If any distributor shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within thirty days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition, whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act nor any of its provisions shall apply to foreign or interstate commerce."

Section 5. That the law as it appears in chapter six (6) of the acts of the forty-first general assembly be and the same is hereby amended by inserting immediately following section five (5) thereof, the following section:

"5-a. Every railroad company, or other person, firm or corporation transporting gasoline in tank cars or other receptacles from without the state consigned and delivered

to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car or other conveyor of gasoline received at the station or place during the preceding calendar month, the name of the consignor and the name of the consignee. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of gasoline as herein defined shall be subject to inspection during ordinary business hours by the treasurer or his representatives."

Section 6. That the law as it appears in section seven (7) of chapter six (6) of the acts of the forty-first general assembly be and the same is hereby amended by inserting after the word "distributor" in line one (1) thereof a comma (,) and the following: "railroad or transportation company or agent of a railroad or transportation company."

Also further amend said section by inserting immediately following the word "reports" in line two (2) thereof the words, "or certificate."

Also further amend said section by striking from line seven (7) thereof the following: "4 and 5," and by substituting in lieu thereof the following: "four, five and five-a."

That said section be further amended by adding to the end thereof the following:

"If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer

thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor."

Section 7. That the law as it appears in section eight (8) of chapter six (6) of the acts of the forty-first general assembly, be and the same is hereby amended by inserting a comma (,) after the word "purchased" in line fourteen (14) thereof, and the words "paid for."

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The Original Act as Amended as Carried by Code Editor In Code of 1927 *as Follows:*

CODE OF IOWA, 1927.

Chapter 251-A1.
Gasoline License Tax.

5093-a1. Amount of Fee. A license fee of two cents (2c) per gallon or fraction of a gallon is hereby imposed on all gasoline used or otherwise disposed of in this state for any purpose whatsoever. Any person using gasoline within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided (41 G. A., ch. 6, Sec. 1; 42 G. A., ch. 248, Sec. 1).

5093-a2. Definition of Terms. The term "distributor" as used in this chapter shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any gasoline to be used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary

gasoline tank attached to and forming a part of such motor vehicle, not more than twenty gallons of gasoline without being considered a distributor.

The term "person" includes individual, partnership, corporation and association.

The term "treasurer" means the treasurer of the state of Iowa (41 G. A., ch. 6, Sec. 2).

5093-a3. Sale Price—Placard—Misdemeanor—Penalty. Any person who sells or offers for sale at retail gasoline in this state, shall keep posted in a conspicuous place, most accessible to the public, a placard showing the total sale price per gallon including license fee, of all grades of gasoline sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars, or imprisonment in the county jail for a period of not to exceed thirty days (41 G. A., ch. 6, Sec. 3; 42 G. A., ch. 248, Sec. 2).

5093-a4. Certificates—License. Each distributor now engaged in business as herein defined, shall within thirty days after this chapter becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of gasoline in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which

contain the name under which such distributor is transacting business within the State of Iowa, and the principal place of business of such distributor. If such a distributor is a firm or copartnership, the certificate shall also contain the names and addresses of the several persons constituting the same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, and the names and addresses of its principal officers, resident general or managing agent and attorney-in-fact.

Each distributor now engaged in business as herein defined shall, within sixty days after this chapter becomes effective, and any person or persons desiring to engage in such business shall, before beginning the manufacture or sale of gasoline within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section (41 G. A. ch. 6, Sec. 4; 42 G. A., ch. 248, Sec. 3).

Reports—Remittances—Rebates—Penalties. On or before the twentieth day of each calendar month each distributor of gasoline shall file in the office of the treasurer of state at Des Moines, Iowa, a duly acknowl-

edged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of gasoline imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which gasoline is imported into the state of Iowa. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

If, after the prescribed license fees are so remitted and paid, any gasoline in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state, the said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a refund. The auditor of state shall issue his warrant drawn on the gasoline fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in section 5093-a8.

If any distributor of gasoline shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within

thirty days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition, whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42 G. A., ch. 248) nor any of its provisions shall apply to foreign or interstate commerce (41 G. A., ch. 6, sec. 5; 42 G. A., ch. 248, sec. 4).

5093-b1. Tank Car Reports—Inspection of Books. Every railroad company, or other person, firm or corporation transporting gasoline in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car, or other conveyor of gasoline received at the station or place during the preceding calendar month, the name of the consignor and the name of the consignee. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of gasoline as herein defined, shall be subject to inspection during ordinary business hours by the treasurer or his representatives (42 G. A., ch. 248, sec. 5).

5093-a6. Books Open to Inspection. The books, records, papers, receipts, invoices and equipment of any distributor which pertains to the sale of gasoline shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representatives by such investigation, shall be confidential and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding one thousand dollars (41 G. A., ch. 6, sec. 6).

5093-a7. Misdemeanor—Penalty. Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificates to the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of gasoline, or who shall make any incomplete, false or fraudulent return hereunder, or who shall in any manner violate the provisions of sections 5093-a4, 5093-a5 and 5093-b1 hereof, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor (41 G. A., ch. 6, sec. 6; 42 G. A., ch. 247, sec. 6).

5093-a8. Reimbursement—Procedure—False Statement. Any person who shall buy or use any gasoline for

the purpose of operating or propelling stationary gas-engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any gasoline for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public highways of the state, or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fees paid by him, upon presenting to the treasurer of the state a statement accompanied by the original invoices showing such purchase, which statement shall set forth the total amount of gasoline so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of the state or upon the streets of any city or town of the state, and the treasurer of state shall, upon the presentation of such invoice, cause to be repaid from the funds operated by the license fee collected on the use of gasoline as herein provided, the amount of such license fee paid by such consumer on gasoline used for purposes other than for propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose, within ninety days after the date on which such gasoline shall have been purchased as shown by the invoice. Any person, firm or corporation who shall make any false statement in connection with an application for a refund of any money

or license fee as herein provided, or who shall collect or cause to be repaid to him or any person any such fees, without being entitled to the same under the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed one thousand ($1,000.00) dollars (41 G. A., ch. 6, sec. 8; 42 G. A., ch. 248, sec. 7).

5093-a9. Distribution of Proceeds. License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund. One-third to the county road fund, and one-third to the township road fund, which county and township road funds the treasurer shall apportion among the counties of the state in the same ratio that the area of the county bears to the total area of the state, and on the first days of each month shall remit to the treasurer of each county the apportionments for its county and township road fund. The county treasurer, thereupon, shall apportion such township road fund among the townships of the county in the same ratio that the number of miles of township roads in the township bears to the total number of miles of township roads within the county, and shall remit quarterly to the clerk of each township the apportionment for its township road fund (41 G. A., ch. 6, sec. 9).

5093-a10. Refunds Quarterly. The refunds provided for in section 5093-a8 shall be made quarterly by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of

state shall issue his warrants for refunds certified to him by the treasurer of state (41 G. A., ch. 6, sec. 10).

5093-a11. Employees—Appropriation. The treasurer of state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter, sufficient funds to pay for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein (41 G. A., ch. 6, Sec. 10-a1).

5093-a12. Act Separable. If any part of this chapter is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this chapter (41 G. A., ch. 6, sec. 11; 42 G. A., ch. 248, sec. 9).

The Original Act Which Was Amended to Enact The One Cent Tax.

Chapter 101. (42 G. A.)

Highways.

An Act to amend, revise, and recodify sections 4622, 4623, 4687 to 4706, inclusive, 4708, 4712, 4718, 4719, 4727 to 4738, inclusive, 4741, 4743, 4744, 4755, 5001 of Code 1924; and chapter 114 of the laws of the 41st General Assembly and to amend section 5002 of the Code, 1924, relative to the primary road system and primary road funds, to transfer the control of the primary road to the state, to empower the state to construct and maintain the primary road system, to do away with special assess-

ments for paving primary roads, to refund for such assessments so levied, to do away with the area basis for allotting primary road funds among the counties, to provide for an increase in the membership of the State Highway Commission, to further prescribe their rights and duties, and limiting their powers with respect to creating an obligation against the state.

Be it Enacted by the General Assembly of the State of Iowa:

Section 4687 to 4706, inclusive, 4708, 4712, 4718, 4719, 4727 to 4738, inclusive, sections 4741, 4744, 4755, 5001 of the Code, 1924, and Chapter 114 of the laws of the 41st General Assembly are hereby amended and codified to read as follows:

Section 5. Reimbursement of Counties. Where additional right of way has been acquired or where bridges have been built on the primary roads, under the supervision of the highway commission, and paid for out of the county road or bridge funds since April 19, 1919, said county shall be reimbursed for said right of way and said bridges out of the primary road fund within three years from the taking effect of this act; provided, however, any county that has received or will receive during the year 1927 primary road money for use on secondary roads, the amount of such primary road money so received by such county and used on the secondary roads, shall be deducted from the amount of refunds provided for herein. The refunds made to any county under this section shall be at the option of the board of supervisors of said county, placed to the credit of the county road fund or the county bridge fund.

The Amendment Which Provides for and Creates the One Cent License Fee.

Chapter 103. (42 G. A.)
Highways—Audit—Gasoline Tax.

An Act to amend the law as it appears in Senate File No. 104 as enacted by the 42nd General Assembly of the State of Iowa, relating to the improvement of the primary road system, and the appointment of members of the highway commission, and an auditor therefor.

Be it Enacted by the General Assembly of the State of Iowa:

Section One. That the law as it appears in section 5 of Senate File No. 104, as enacted by the 42nd General Assembly of the State of Iowa be, and the same is hereby amended by striking from line 6 thereof the word "three (3)" five annual payments. The first payment to be made January 1, 1928, and the board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six (6) years nor to bear an interest rate to exceed five (5) per cent. There is hereby levied on all gasoline imported and used within this state a license fee of one (1) cent per gallon, which shall be in addition to the license fee levied by chapter six (6), laws of the 41st General Assembly. All of the provisions and conditions of said chapter six (6), laws of the 41st General Assembly, relating to the levy, collection or payment of the license fee on gasoline shall apply with equal force to the license fee collected herein. Out of the proceeds of said additional license fee, the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge and right of way refund be-

coming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund.

Section Two. That the law as it appears in section 16 of Senate File No. 104, as enacted by the 42nd General Assembly of the state of Iowa, be and the same is hereby repealed, and the following enacted in lieu thereof:

"All claims shall be itemized on voucher forms prepared for that purpose, sworn to by the claimants, certified to by the engineer in charge, and then forwarded to the state highway commission for audit and approval. Upon the approval by the state highway commission of vouchers which are payable from the primary road fund, such vouchers shall be forwarded to the auditor of state, who shall draw warrants therefor, and said warrants shall be paid by the treasurer of state from the primary road fund."

Section Three. That the law as it appears in section 21 of Senate File No. 104 as enacted by the 42nd General Assembly of the State of Iowa be, and the same is hereby repealed and the following enacted in lieu thereof:

"The state board of audit shall appoint the auditor of the state highway commission, who shall give bond in the sum of fifty thousand dollars ($50,000.00) for the faithful performance of his duties. The premium on said bond shall be paid by the state highway commission from its support fund. Said auditor shall check and audit all claims against the commission before such claims are approved by the commission, and shall keep all records and accounts relating to the expenditures of the commission.

He shall, in the checking and auditing of claims against the commission, and in keeping the records and accounts of the commission, be under the direction and supervision of the state board of audit, and act as an agent of said board. The state highway commission shall furnish said auditor with such help and assistants as may be necessary to properly perform the duties herein specified. The executive council may remove said auditor from office for failure to comply with the directions and instructions of the state board of audit in performance of the duties herein required."

Approved April 19, 1927.

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The Original Amendment Creating One Cent License Fee As Carried by the Code Editor in Code of 1927 as Follows:

CODE OF IOWA, 1927.

4755-b5. Refunds. Where additional right of way has been acquired, or where bridges have been built on the primary roads under the supervision of the highway commission, and paid for out of the county road or bridge fund since April 19, 1919, said county shall be reimbursed for said right of way and said bridges out of the primary road fund within five annual payments from the taking effect of this chapter; the first payment to be made January 1, 1928; and the board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six years nor to bear an interest rate to exceed five per cent.

The refunds made to any county under this section shall, at the option of the board of supervisors of said county, be placed to the credit of the county road fund or the county bridge fund (38 G. A., ch. 237, sec. 4; 39 G. A., ch. 20 sec. 1; 39 G. A., ch. 188, sec. 2; 40 G. A., ch. 84 sec. 1; C., '24, sec. 4690; 42 G. A., ch. 101, sec. 5; 42 G. A., ch. 103, sec. 1).

Attempt is hereby made with great difficulty to apply 42 G. A., ch. 103, sec. 1, as an amendment to 42 G. A., ch. 101, sec. 5.

The provision of 42 G. A., ch. 101, sec. 5, relating to payments made during 1927 has been omitted because purely temporary.

For that part of the amendment relating to the additional tax on gasoline, see sec. 4755-b38.

4755-b38. Gasoline—Additional Tax. There is hereby levied on all gasoline imported and used within the state a license fee of one cent per gallon, which shall be in addition to the license fee levied by chapter 251-a1. All of the provisions and conditions of said chapter 251-a1 relating to the levy, collection or payment of the license fee on gasoline shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund (42 G. A., ch. 103, sec. 1).

Amendment Creating and Providing for Distributors' License.

ACTS OF 43RD GENERAL ASSEMBLY.

Chapter 29. Gasoline License Fees.

An Act to amend the law as it appears in chapter [illegible] of the Code of 1927, and to amend the law as it appears in section 5093-a4, and in section 5093-a5, of the Code of 1927, relating to the collection of gasoline license fees and the reports of distributors of gasoline, and to provide for the furnishing of a bond or financial statement by distributors.

Be it enacted by the General Assembly of the State of Iowa:

Section 1. That the law as it appears in chapter 251-a1 of the Code, 1927, be and the same is hereby amended by inserting the following section in said chapter immediately after section 5093-a4 of said chapter:

"Before any distributor shall engage in business as defined in this chapter, he shall first file with the treasurer of State a statement showing financial responsibility satisfactory to said department, or a corporate surety bond, payable to the State of Iowa, in the penal sum of $1,000, conditioned that said distributor will pay to the State of Iowa any and all fees required by the [illegible]. No license shall be issued unless the bond or financial statement required herein is attached to and delivered to the treasurer of State with the application for said license. Said bond or financial statement shall be approved by the secretary of state. If any distributor now engaged in business fails to file the bond or financial statement required by this act, within 30 days after the effective date thereof, his license shall be revoked."

Section 2. That the law as it appears in section 5093-a5 of the Code of 1927 be, and the same is hereby amended as follows:

By inserting after the period (.) in line 12 thereof, the following:

"If no importations are made for the preceding calendar month, a report shall be made to that effect on the forms prescribed herein and in the same manner."

Also, by striking from line 43 thereof, the word "thirty," and by substituting in lieu thereof the word "ten."

Section 3. This act being deemed of sufficient importance shall be in full force and effect from and after its passage and publication in the Des Moines Daily Record, a newspaper published at Des Moines, Iowa, and in the Muscatine Journal, a newspaper published at Muscatine, Iowa.

Senate File No. 99. Approved April 5, A. D., 1929 (Certification of Secretary of State).

An Amendment Changing the Law as to Apportionment of Tax.

ACTS OF THE 43RD GENERAL ASSEMBLY.

Chapter 20.

Section 75, Apportionment of Gasoline Tax.

Section 5093-a9, Code of 1927, is amended by striking out all parts thereof after line 4, and by inserting in lieu thereof said stricken words, the following, to wit:

"Two-thirds to the secondary road construction fund of the several counties of the state. The Treasurer shall

apportion said two-thirds portion among the counties of the state, and shall, on the first day of each month, remit to the Treasurer of each county, the amount apportioned to the secondary road construction fund of the county.

—o—

CODE OF 1927 AND 1931.

12893. Prohibited Acts—Misdemeanors. When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor (C51, sec. 2675; R60, sec. 4302; C73, sec. 3966; C97 Sec. 4905; C24, 27 sec. 12893).

12894. Punishment for Misdemeanors. Every person who is convicted of a misdemeanor, the punishment of which is not otherwise prescribed by any statute of this state, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment (C51, sec. 2676; R60, sec. 4303; C73, sec. 3967; C97, sec. 4906; C24, 27, sec. 12894).

4755-b5. Refunds. Where additional right of way has been acquired or where bridges or culverts have been built on the primary roads under the supervision of the highway commission and paid for out of the county road or bridge funds since April 19, 1919, said county shall be reimbursed for said right of way and said bridges or culverts out of the primary road fund in seven annual payments. Provided, however, in counties where the total refund does not exceed the sum of five thousand dollars the entire refund shall be made at the time of the first annual payment. The first payment shall be made January 1, 1928, and the board of supervisors is

authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six years, nor to bear an interest rate to exceed five per cent.

The refunds made to any county under this section shall, upon their receipt by the county, be placed to the credit of the secondary road construction fund unless heretofore pledged.

Payments already made under the section for which this section is a substitute shall be readjusted by the highway commission to conform herewith (C24, sec. 4690; C27, sec. 4755-b5; 42 Ex. G. A., ch. 3; 43 G. A., ch. 20, sec. 74).

4755-b31. Maintenance Fund for Commission—Report. There is hereby created a fund for the maintenance of the state highway commission consisting of two and one-half per cent of all moneys paid into the state treasury under the act regulatory of licenses on motor vehicles. Said fund shall be used for no other purpose than as a maintenance fund for the state highway commission and shall be drawn out only on warrants drawn by the auditor of state on itemized vouchers approved by the state highway commission. The expenditures of said commission shall be audited by the state board of audit and a full and complete report of all said expenditures shall be published in the annual report under the act creating the state highway commission (C24, sec. 4744; C27, Sec. 4755-b31). Referred to in sec. 4630-c1.

4755-b38. Motor Vehicle Fuel—Additional Tax. There is hereby levied on all motor vehicle fuel imported and used within this state a license fee of one cent per gallon, which shall be in addition to the license fee levied by

chapter 251-a1. All of the provisions and conditions of said chapter 251-a1 relating to the levy, collection or payment of the license fee on motor vehicle fuel shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge, culvert and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund (C'27, sec. 4755-b38; 42 Ex. G. A., ch. 3; 44 G. A., ch. 108).

CODE OF 1931.

CHAPTER 251-A1.

MOTOR VEHICLE FUEL TAX.

5093-a1. Amount of fee. A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever. Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for, unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided (C'27, Sec. 5093-a1; 44 G. A., ch. 108).

Additional fee of one cent, Sec. 4755-b38. Supra.

5093-a2. Definition of terms. The term "distributor" as used in this chapter shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any motor vehicle fuel to be

used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary motor vehicle fuel tank attached to and forming a part of such motor vehicle, not more than twenty gallons of motor vehicle fuel without being considered a distributor.

The term "person" includes individual, partnership, corporation and association.

The term "treasurer" means the treasurer of the state of Iowa.

"Motor vehicle fuel" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and kept for sale or sold for that purpose, except the products commonly known as kerosene and/or distillate or petroleum products of lower gravity (Baume scale) when not used to propel a motor vehicle or for compounding or combining with any motor vehicle fuel (C'27, sec. 5093-a2; 44 G. A., ch. 108).

5093-a3. Sale price placard—misdemeanor—penalty. Any person who sells or offers for sale a retail motor vehicle fuel in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the total sale price per gallon including license fee, of all grades of motor vehicle fuel sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner desig-

nated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars or imprisonment in the county jail for a period not to exceed thirty days (C'27, sec. 5093-a3; 44 G. A., ch. 108).

5093-a4. Certificate—license. Each distributor now engaged in business as herein defined, shall within thirty days after this chapter becomes effective, and every distributor desiring to engage in such business, shall before beginning the sale or manufacture of motor vehicle fuel in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which shall contain the name under which such distributor is transacting business within the state of Iowa, and the principal place of business of such distributor. If such distributor is a firm or co-partnership, the certificate shall also contain the names and addresses of the several persons constituting same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney in fact.

Each distributor now engaged in business as herein defined, shall, within sixty days after this chapter becomes effective, and any person or persons desiring to engage in business, shall, before beginning the manufacture or sale of motor vehicle fuel within the state, procure a license from the treasurer of state, permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person

or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section (C'27, sec. 5093-a4; 44 G. A., ch. 108).

Referred to in Sec. 5093-a7.

5093-c2. Distributor—requirements. Before any distributor shall engage in business as defined in this chapter, he shall first file with the treasurer of state a statement showing financial responsibility satisfactory to said department, or corporate surety bond payable to the state of Iowa in the penal sum of one thousand dollars, conditioned that said distributor will pay to the state of Iowa any and all fees required by the law. Said bond, or financial statement, shall be approved by the treasurer of state. No license shall be issued unless the bond, or financial statement, required herein is attached to and delivered to the treasurer of state with the application for said license. If any distributor now engaged in business fails to file the bond, or financial statement, required by this section within thirty days after the effective date thereof, his license shall be revoked (43 G. A., ch. 29, p. 1).

5093-a5. Reports—remittance—rebates and penalties. On or before the 20th day of each calendar month each distributor of motor vehicle fuel shall file in the office of the treasurer of state, at Des Moines, Iowa, a duly

acknowledged report on forms prescribed and furnish
by said treasurer, showing the total number of gallo
of motor vehicle fuel and/or of any substance or materi
imported into the state for the purpose of manufacturi
mixing, blending or compounding motor vehicle fuels
defined in this chapter imported by him during the prece
ing calendar month, the date of receipt, unloading poi
tank car identification and invoice gallonage of each a
every tank car or other receptacle in which motor vehi
fuel is imported into the state of Iowa. If no importatio
are made for the preceding calendar month, a report sh
be made to that effect on the forms prescribed here
and in the same manner. At the same time he shall rem
to the treasurer the amount of the license fee for su
preceding month; provided, however, that in computi
said amount a deduction of 3 per cent of the invoi
gallonage imported may be made for evaporation a
loss.

If, after the prescribed license fees are so remitt
and paid, any motor vehicle fuel in the possession of
licensed distributor is destroyed by fire, lightning, sto
or accident not caused by the fault of such distributor
any employee thereof, before being sold or used by hi
upon proper application therefor and proof of such d
struction or loss satisfactory to the treasurer of state, t
said treasurer is authorized to certify to the amount of t
license fee so paid thereon to the auditor of state as
refund. The auditor of state shall issue his warra
drawn on the motor vehicle fuel fund in payment there
and the same shall be paid in the same manner and fro
the same fund as those refunds authorized in Sec. 5093-a

If any distributor of motor vehicle fuel shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within ten days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition, whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42 G. A., ch. 248) nor any of its provisions shall apply to foreign or interstate commerce (C'27, sec. 5093-a5; 43 G. A., ch. 29, Sec. 2; 44 G. A. ch. 108).

Referred to in Sec. 5093-a7.

5093-b1. Tank car reports—inspection of books. Every railroad company, or other person, firm or corporation transporting motor vehicle fuel in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad

or other carrier, the date of unloading and identification of each tank car or other conveyor of motor vehicle fuel received at the station or place during the preceding calendar month, the number of gallons of motor vehicle fuel and/or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of motor vehicle fuel as herein defined shall be subject to inspection during ordinary business hours by the treasurer or his representatives (C'27, sec. 5093-b1; 44 G. A. ch. 108).

Referred to in Sec. 5093-a7.

5093-a6. Books open to inspection. The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of motor vehicle fuel shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representative by such investigation, shall be confidential, and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding one thousand dollars (C'27, Sec. 5093-a6; 44 G. A., ch. 108).

5093-a7. Misdemeanor—penalty. Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificate to the treasurer as herein prescribed, or shall refuse to permit the treas-

urer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of motor vehicle fuel, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 5093-a4, 5093-a5 and 5093-b1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor (C'27, Sec. 5093-a7; 44 G. A., ch. 108).

5093-a8. Reimbursement—procedure—false statement. Any person who shall buy or use any motor vehicle fuel for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or air-craft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any motor vehicle fuel for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid to the amount of such license fee paid by him, upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase, which statement shall set forth the total amount of motor vehicle fuel so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in

whole or in part upon any of the public highways of this state or upon the streets of any city or town of this state, and the treasurer of state shall, upon the presentation of such invoice, cause to be repaid from the funds collected hereunder, the amount of such license fee paid by such consumer on motor vehicle fuel used for purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose, within ninety days after the date on which such motor vehicle fuel shall have been purchased, as shown by the invoice. Any person, firm or corporation who shall make any false statement in connection with an application for the refund of any money or license fee as herein provided, or who shall collect or cause to be repaid to him or any person, any such fees, without being entitled to the same under the provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (C'27, sec. 5093-a8; 44 G. A., ch. 108.

Referred to in Sec. 5093-a5, 5093-a10.

5093-a9. Distribution of proceeds. License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund. Two-thirds to the secondary road construction fund of the several counties of the state. The treasurer shall apportion said two-thirds portion among the counties of the state in the ratio that the area of each county bears to the total area of the state, and

shall, on the first day of each month, remit to the treasurer of each county the amount apportioned to the secondary road construction fund of the county (C27, sec. 5093-a9; 43 G. A., ch. 20, Sec. 75).

5093-a10. Refunds quarterly. The refunds provided for in Section 5093-a8 shall be made quarterly by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants for refunds certified to him by the treasurer of state (C27, sec. 5093-a10).

5093-a11. Employees—appropriations. The treasurer of state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter sufficient funds to pay for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein, and to pay the cost of postage, equipment, supplies and printing used by the department (C27, sec. 5093-a11; 44 G. A., ch. 125).

5093-a12. Act separable. If any part of this chapter is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this chapter (C27, sec. 5093-a12).